

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

NATALIYA MAKARENKO,

Respondent/Plaintiff,

vs.

CIS DEVELOPMENT FOUNDATION, INC.
a New Jersey non-profit corporation,

Appellant/Defendant.

RESPONDENT NATALIYA MAKARENKO'S
ANSWERING BRIEF

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TABLE OF CONTENTS

INTRODUCTION	1
RESPONSE TO ASSIGNMENTS OF ERROR AND ISSUES	1
STATEMENT OF THE CASE.....	3
A. Facts Underlying the Complaint.	3
1. Nataliya's Donation to CISDF.	3
2. CISDF Misuses Nataliya's Donated Funds.	4
B. Facts Underlying the Default Judgment.	5
1. Nataliya Files Her Complaint Against CISDF.	5
2. CISDF's Correspondence to Nataliya's Counsel.	6
3. Despite Notice, CISDF Fails to File an Answer.....	6
C. Events After the Filing of the Motion for Default	7
1. Alex Ross, Acting for CISDF, Calls Nataliya's Counsel.	7
2. Judge Melnick Grants Nataliya's Motion for Default.	9
3. CISDF Retains Washington Counsel.	9
4. Judge Melnick Denies CISDF's Motion to Vacate.	10
ARGUMENT.....	10
A. Judge Melnick Acted Within His Discretion When He Denied CISDF's Motion to Vacate.	10
1. Standard of Review.	11
2. CISDF Was Not Entitled to the Notice of Default.	11
a. CISDF's Letter Fails to Meet the Requirements of an Answer.....	12
b. CISDF's Letter Fails to Meet the Requirements for an Appearance.	14
3. Nataliya Sent Notice of Her Intent to Move for a Default.	16
4. CISDF Fails to Meet the White Factors.	19
a. CISDF Failed to Present a Conclusive Defense.	19
b. CISDF's Failure to File an Answer was Not Excusable Neglect.....	21

c.	CISDF's Failure to Obtain Counsel and File an Answer was Not the Result of a Clerical Mistake or Misconduct by Nataliya's Counsel.	24
d.	Attorney Thomson Acted Promptly for CISDF.....	25
e.	Nataliya Would Suffer Substantial Hardship if the Default Judgment were Vacated.....	26
5.	Nataliya Properly Served CISDF Under RCW 4.28.180.	28
6.	Conclusion.....	32
B.	The Superior Court Properly Denied CISDF's Motion to File an Amended Answer.....	33
C.	Judge Melnick Relied Solely on Noncontested Facts, and the Alleged Inadmissible Hearsay was Not Hearsay or was Admissible Under an Exception.....	34
1.	Standard of Review.	34
2.	Judge Melnick did not rely on the statements.	34
3.	Attorney Ross and Russky's statements were not hearsay.....	35
4.	Paragraph 11 of Adam's Declaration is Admissible.	36
D.	Judge Melnick Properly Denied CISDF's Motion for Attorneys' Fees and Costs.....	37
E.	Response to Request for Fees and Costs.....	39
	REQUEST FOR FEES AND COSTS	39
	CONCLUSION	40

TABLE OF AUTHORITIES

Cases

<i>Bar v. Citizens Interbank of Tampa, Florida,</i> 96 Wn.2d 692, 635 P.2d 441 (1981).....	30
<i>Brundridge v. Fluor Federal Services, Inc.,</i> 164 Wn.2d 432, 450, 191 P.3d 879 (2008).....	34, 35
<i>Conner v. Universal Utilities,</i> 105 Wn.2d 168, 712 P.2d 849 (1986).....	23
<i>Cottringer v. State,</i> 162 Wn.App. 782, 787, 257 P.3d 667 (2011).....	13
<i>Duryea v. Wilson,</i> 135 Wn.App. 233, 238, 144 P.3d 318 (2006).....	16
<i>Griggs v. Averbek Realty, Inc.,</i> 92 Wn. 2d 576, 582, 599 P.2d 1289 (1979).....	21, 22
<i>Harter v. King County,</i> 11 Wn.2d 583, 119 P.2d 919 (1941).....	23
<i>Johnson v. Cash Store,</i> 116 Wn.App. 833, 841, 68 P.3d 1099 (2003).....	20, 21, 22, 26
<i>Lloyd Enterprises, Inc. v. Longview Plumbing & Heating Co., Inc.,</i> 91 Wn.App. 697, 699, 958 P.2d 1035 (1998).....	13, 14
<i>Merrit v. Calhoun,</i> 46 Wn.App. 616, 619, 731 P.2d 1094 (1986).....	22
<i>Morin v. Burris,</i> 160 Wn.2d 745, 753, 161 P.3d 956 (2007).....	11, 14
<i>Morris v. Palouse River and Coulee City Railroad, Inc.,</i> 149 Wn.App. 366, 203 P.3d 1069 (2009).....	30
<i>Payne v. Saberhagen Holdings, Inc.,</i> 147 Wn.App. 17, 36, 190 P.3d 102 (2008).....	38, 39
<i>Pfaff v. State Farm Mutual Automobile Insurance Company,</i> 103 Wn.App. 829, 834, 14 P.3d 837 (2000).....	20
<i>Prest v. American Bankers,</i> 79 Wn.App. 93, 99, 900 P.2d 595 (1995).....	19
<i>Professional Marine Co. v. Those Certain Underwriters at Lloyd's,</i> 118 Wn.App. 694, 709-11, 77 P.3d 658 (2003).....	15

<i>Sacotte Construction, Inc. v. National Fire & Marine Insurance, Co.</i> , 143 Wn.App. 410, 415, 177 P.3d 1147 (2008).....	14
<i>Scott Fetzer Co. v. Weeks</i> , 114 Wn.2d 109, 120, 786 P.2d 265 (1990).....	38, 40
<i>Seek Systems, Inc. v. Lincoln Moving/Global Van Lines, Inc.</i> , 63 Wn.App. 266, 270, 818 P.2d 618 (1991).....	15
<i>Sharebulider Securities, Corp. v. Hoang</i> , 137 Wn.App. 330, 153 P.3d 222 (2007).....	28, 29
<i>Shepard Ambulance, Inc. v. Helsell, et.al.</i> , 95 Wn.App. 231, 243, 974 P.2d 1275 (1999).....	26
<i>State v. Chambers</i> , 134 Wn.App. 853, 858, 142 P.2d 668 (2006).....	34, 35
<i>State v. O’Connell</i> , 84 Wn.2d 602, 606-07, 528 P.2d 988 (1974).....	38, 39
<i>State v. Rafay</i> , 167 Wn.2d 644, 655, 22 P.3d 86 (2009).....	11
<i>Tacoma Recycling v. Capitol Material Handling Co.</i> , 34 Wn.App. 392, 395, 661 P.2d 609 (1983).....	16
<i>White v. Holm</i> , 73 Wn.2d 348, 438 P.2d 581 (1968).....	19
<i>Whitney v. Knowlton</i> , 33 Wn. 319, 322, 74 P. 469 (1903).....	29
<u>Statutes</u>	
RCW 4.28.080(4).....	30
RCW 4.28.180	11, 28
RCW 4.28.185(4).....	28, 29, 30, 32
RCW 4.28.185(5).....	37, 38
<u>Rules</u>	
CR 5(d).....	12
CR 55	2
CR 7(a).....	12, 16
CR 10	12

CR 11	12, 18
CR 12	12
CR 4(a)(3)	14
CR 55(a)(3)	14, 16, 17, 18
CR 60(b).....	39
CR 8	2, 12
CR 8(b).....	33
ER 801(c);.....	35
ER 801(d)(2)	36
ER 803(21).....	37
ER 803(23).....	37
ER 803(6).....	37
ER 803(8).....	37
RAP 18.1(a)	39

Other Authorities

27 Marjorie Dick Rombauer, Washington Practice: Creditors' Remedies— Debtors' Relief § 5.4 at 484 (1998)	29
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Plaintiff-Respondent Nataliya Makaranko (“Nataliya” or “Plaintiff”) submits this Answering Brief in response to the Opening Brief of Defendant-Appellant CIS Development Foundation, Inc., a New Jersey Corporation, (“CISDF” or “Defendant”).

INTRODUCTION

CISDF hopes this Court will reverse Judge Melnick’s well-reasoned and informed decision not to vacate the default judgment against CISDF. In his March 22, 2012, Court’s Decision (the “Decision”) denying CISDF’s Motion to Vacate Default Judgment (“Motion to Vacate”), Judge Melnick reviewed the essential uncontested facts, articulated the proper standard for vacation of default judgments, and used his discretion to deny CISDF’s Motion to Vacate. His decision was not illogical and did not rest on an erroneous application of the law. CISDF brought this appeal because it does not like Judge Melnick’s conclusions; Judge Melnick did not abuse his discretion. Therefore, this Court should affirm Judge Melnick’s Decision denying CISDF’s Motion to Vacate.

RESPONSE TO ASSIGNMENTS OF ERROR AND ISSUES

Plaintiff responds to the four assignments of error alleged by Defendant as follows:

Assignment 1: Judge Melnick justly exercised his discretion in entering the Decision denying CISDF's Motion to Vacate. Specifically, Judge Melnick properly declined to vacate the default judgment because:

- CISDF was not entitled to a notice under Superior Court Civil Rule ("CR") 55;
- Nataliya gave CISDF appropriate notice under CR 55;
- Plaintiff's counsel is not responsible for filing correspondence from the President of an opposing party;
- CISDF's failure to timely appear was inexcusable neglect; and
- The statutory affidavit was sufficient.

Assignment 2: Judge Melnick did not reach CISDF's motion to file an amended answer because the judgment was not vacated, further CISDF's proposed amended answer does not conform to CR 8 and therefore cannot be filed.

Assignment 3: Judge Melnick properly exercised his discretion in declining to strike the alleged inadmissible hearsay because (1) he did not rely on the complained about statements, (2) the statements are not hearsay, or (3) the statements are admissible under one of several exceptions.

Assignment 4: Judge Melnick did not address CISDF's motion for attorneys' fees and costs because the judgment was not vacated, and

because CISDF failed to prove that it incurred any added expenses from the case being brought in Washington it is not entitled to attorneys' fees.

STATEMENT OF THE CASE

Plaintiff disputes Defendant's Statement of the Case, and modifies and supplants it as described below.

A. Facts Underlying the Complaint.

1. Nataliya's Donation to CISDF.

In early 2010, Valery Russky ("Russky") solicited Nataliya for a donation to CISDF and Saint Nikolas. App. 1; CP 150. From Russky, Nataliya learned about CISDF and Saint Nikolas's partnership and CISDF's stated mission to assist economic development in the Commonwealth of Independent States (including the Russia, Ukraine, Georgia, and other republics of the former Soviet Union). App. 1-2; CP 150-51.

Russky and other representatives of CISDF assured Nataliya that CISDF would use her donated funds to purchase and ship clothing to Saint Nikolas, which is located in Kiev, Ukraine. Nataliya would pick out the clothes to be shipped from the CISDF warehouses in New Jersey to Saint Nikolas. App.2; CP 151. Saint Nikolas would then distribute the clothes to other charities in and around Kiev. App. 2; CP 151.

Based on the representations of Russky and other representatives of CISDF, Nataliya donated \$46,500 to CISDF on May 5, 2010. App. 2; CP 151. Nataliya wired \$46,500 from her local Bank of America branch in Vancouver, Washington to CISDF's bank. App. 2; CP 151. Nataliya directed that her donation go to the purchase and shipment of clothes to charities in Kiev, through Saint Nikolas. App. 2; CP 151. In the interest of maximizing the effect of Nataliya's donation, Sasha Makarenko ("Sasha"), Nataliya's brother who lives near Kiev, offered to help store and distribute the donated clothing to the nearby charities for Saint Nikolas. App. 2; CP 151. Russky, on behalf of Saint Nikolas and CISDF, accepted Sasha's offer of assistance. App. 2; CP 151. In early May, Nataliya traveled to New Jersey to visit CISDF's warehouses, where she picked out the clothes she wanted shipped to Saint Nikolas. App. 2; CP 151.

2. CISDF Misuses Nataliya's Donated Funds.

Nataliya received no further communications from CISDF regarding her donation or how the funds were used. App. 3; CP 152. Both Nataliya and Sasha attempted to contact CISDF and Saint Nikolas numerous times to discover the status of the shipment. App. 3; CP 152. Finally, Russky contacted Sasha and informed him that the clothes had arrived. She agreed to meet Sasha so that he could inspect the clothing

and arrange for storage. App. 3; CP 152. Russky presented Sasha with a sample of the clothes allegedly received from CISDF. App. 3; CP 152. Sasha inspected the sample clothes and found them of substantially lesser quality than the ones chosen by Nataliya. App. 3; CP 152. Nonetheless, true to his word, Sasha arranged for a different facility to store the clothes and contacted Russky to arrange for the clothes to be moved to the storage facility he had paid for. He received no response. App. 3; CP 152. Nataliya repeatedly contacted CISDF to arrange for the clothes to be picked up from Saint Nikolas by Sasha. She also received no response. App. 3; CP 152.

In April of 2011, after being without confirmation that her donation was used as directed for nearly a full year, Nataliya engaged a local law firm in Kiev, Ukraine, to contact Saint Nikolas and inquire about the clothes. App. 3; CP 152. When the local attorney contacted Russky she denied all knowledge of CISDF, denied all knowledge of Nataliya and Sasha, and denied that Saint Nikolas ever received a shipment of clothing from CISDF. App. 3; CP 152.

B. Facts Underlying the Default Judgment.

1. Nataliya Files Her Complaint Against CISDF.

On August 8, 2011, Nataliya filed a Complaint for a money judgment against CISDF and personally served the registered agent for

CISDF, Alexander Bondarev (“Bondarev”) with true copies of the Summons, Complaint and Declaration for Out of State Service. App. 5; CP 156. CISDF could not be served within Washington because CISDF does not have a registered agent in Washington and does not have a physical location in Washington. App. 6; CP 157.

2. CISDF’s Correspondence to Nataliya’s Counsel.

On September 29, 2011, Bondarev, acting as President of CISDF, sent a letter to Nataliya’s counsel, Attorney Ronald Adams (“Attorney Adams”). App.6; CP 157. The letter generally responded to the allegations in Nataliya’s Complaint, but did not show that it was filed with the court, did not conform to the Civil Rules, contained new and extraneous information that an answer does not typically contain, did not purport to be an answer, and asserted a fictitious counterclaim for “moral damages.” App. 6; CP 157.

3. Despite Notice, CISDF Fails to File an Answer.

After receiving the letter, Nataliya’s counsel continued to monitor the Superior Court’s docket for filings by CISDF. However, CISDF never filed a document with the court. App.6; CP 157.

On October 24, 2011, Nataliya’s counsel arranged for service by mail of a Notice of Intent to File a Motion for Order of Default (the “Notice of Default”), and enclosed a draft of Nataliya’s Motion for Order

of Default and General Judgment of Default Against Defendant (“Motion for Default”). App. 6-7; CP 157-158. Attorney Adams did not sign the draft Motion for Default because it contained assertions of facts that had not yet occurred. For example the draft Motion for Default contained an assertion that CISDF did not respond to the Notice of Default. App. 6-7; CP 157-58.

On November 2, 2011, after hearing nothing from CISDF, Attorney Adams signed the draft Motion for Default and mailed it to the Clark County Superior Court. App. 7; CP 158. Attorney Adams did not request a hearing on the Motion for Default.

C. Events After the Filing of the Motion for Default

1. Alex Ross, Acting for CISDF, Calls Nataliya’s Counsel.

On November 3, 2011, Attorney Adams received a telephone call from Alex Ross (“Attorney Ross”), who stated that he was an attorney from New York, that he had received a copy of the summons and complaint, Notice of Default, and a purported answer, and that he had some questions regarding the case. App. 7; CP 158. Because Attorney Adams was engaged in full-day depositions on that day and the next day, an associate at Black Helterline LLP, Attorney Caitlin Wong (“Attorney Wong”), returned Attorney Ross’ telephone call. App. 44; CP 147. During that telephone conversation, Attorney Ross represented that he was

working on finding CISDF counsel licensed in Washington to defend the case. App. 45; CP 148. When Attorney Ross and Attorney Wong discussed the purported answer and how it had not been filed, Attorney Ross asserted that “CISDF does enough business to know better.” App. 45; CP 148. Attorney Ross also attempted to begin settlement negotiations, objected to several factual assertions in the complaint, and asserted that both New York and New Jersey do not enforce default judgments obtained in other states. App. 45; CP 148. These comments gave Attorney Wong the impression that Attorney Ross represented CISDF. App. 46; CP 149.

During the conversation, Attorney Ross asked Attorney Wong not to file the Motion for Default. App. 45-46; CP 148-49. Attorney Wong informed Attorney Ross that the Motion for Default had been mailed to the Superior Court the day before. App. 45; CP 148. Attorney Wong then explained that it usually takes a couple of days for the court to turn around default judgments when requested by mail, so Attorney Ross could enter a notice of appearance, find local counsel to enter such a notice, or file an answer if he acted quickly. App. 45; CP 148. Attorney Wong informed Attorney Ross that she thought it extremely unlikely that Nataliya would withdraw the Motion for Default—due to CISDF’s repeated failures to respond to Nataliya, its failure to file any pleadings in response to the

complaint or the Notice of Default—and that she recommended that Attorney Ross find local counsel for CISDF as quickly as possible. App. 45; CP 148. Attorney Wong also agreed to, and did, send Attorney Ross a complete and true copy of the filed Motion for Default. App. 46; CP 149.

2. Judge Melnick Grants Nataliya’s Motion for Default.

Five days after the conversation between Attorney Wong and Attorney Ross, on November 7, 2011, Judge Melnick granted Nataliya’s Motion for Default against CISDF. App. 46; CP 149. No hearing was held on the motion.

3. CISDF Retains Washington Counsel.

On November 22, 2011, Attorney Adams was contacted by Attorney Terry Thomson (“Attorney Thomson”), who represents CISDF. App. 7; CP 158. Attorney Thomson engaged Attorney Adams in negotiations to vacate the default judgment. App. 7; CP 158. The negotiations were drawn out due to Attorney Adams’ trial schedule and should not be held against CISDF. App. 7; CP 158. Those negotiations eventually failed and CISDF filed its Motion to Vacate on December 23, 2011. CP 105-16. The Superior Court, with Judge Melnick presiding, held oral arguments on January 6, 2012, and took the matter under advisement.

4. Judge Melnick Denies CISDF's Motion to Vacate.

On March 22, 2012, Judge Melnick issued a ruling denying CISDF's Motion to Vacate. Judge Melnick explained his reasoning in his four-page Decision, also entered on March 22, 2012. App. 47-50; CP 377-80. In sum, Judge Melnick denied the Motion to Vacate because CISDF's failure to timely appear was the result of inexcusable neglect when Nataliya and her counsel "bent over backwards to accommodate the defendant" and because CISDF did not have a "conclusive defense." App. 49; CP 379. The motion to amend and request for attorneys' fees were denied as a natural result of Judge Melnick's decision not to vacate the default judgment. Judge Melnick's Decision did not directly address CISDF's motion to strike, choosing instead to solely rely upon the essential undisputed facts.

Dissatisfied with Judge Melnick's Decision, CISDF brought this appeal.

ARGUMENT

A. Judge Melnick Acted Within His Discretion When He Denied CISDF's Motion to Vacate.

Judge Melnick did not abuse his discretion in finding that Nataliya's judgment against CISDF should not be vacated for four core reasons:

1. Nataliya was not required to provide a Notice of Default to CISDF;
2. Nataliya provided CISDF with a Notice of Default prior to taking the default;
3. CISDF fails to meet the *White* factors governing the propriety of vacating a default judgment; and
4. Nataliya properly served CISDF under RCW 4.28.180.

Each reason is discussed below in detail.

1. Standard of Review.

A Superior Court's decision on a motion to vacate a default judgment is reviewed for abuse of discretion. *Morin v. Burris*, 160 Wn.2d 745, 753, 161 P.3d 956 (2007). An abuse of discretion occurs when the Superior Court's decision is based on untenable grounds or reasons; a decision is untenable if it rests on an erroneous application of the law. *State v. Rafay*, 167 Wn.2d 644, 655, 22 P.3d 86 (2009); *Morin*, 160 Wn.2d at 753. Questions of law are reviewed de novo. *Id.*

2. CISDF Was Not Entitled to the Notice of Default.

CISDF, a New Jersey corporation, did not make an appearance sufficient to require a Notice of Default prior to an entry of default judgment against it. CISDF's letter was not sufficient because it did not

retain Washington counsel, and the letter was not an answer and did not meet the standards for an appearance.

a. *CISDF's Letter Fails to Meet the Requirements of an Answer.*

CISDF asks this Court to find that a document on company letterhead, addressed to plaintiff's counsel, generally denying plaintiff's claims, not signed by an attorney, and not filed with the court is an answer. However, CISDF disguises this request by asking whether CISDF's "pro se" answer can be treated as a nullity and then supports its position by citing to a string of cases where a corporation was given time to find counsel after filing a document with the court that was not signed by an attorney. In truth, the issue is not whether the letter from CISDF to Nataliya's counsel was a nullity, but whether it was an answer. It was not.

CR 7(a) and 12 require a defendant to prepare and serve an answer within the proper time period. That answer is generally the defendant's first pleading. CR 7(a). CR 5(d) requires that "all pleadings and other papers after the complaint required to be served upon a party shall be filed with the court either before service or promptly thereafter." Based upon these procedural rules, if CISDF's letter was intended to be an answer, CISDF was required to file its answer with the court within the appropriate time. CISDF is responsible for adhering to the requirements of CR 8, 10, 11, and 12. CISDF's letter fails to comply with any of the Civil Rules.

Instead, the letter was addressed specifically to Nataliya's counsel, was on company letterhead, did not directly respond to the allegations in the complaint, contained information not included in an answer (including enclosures potentially meant to appease Nataliya that CISDF had held up its end of the bargain), contains no denials until the end of the letter where it claims "[s]tatements of a plaintiff are false," had no indicia of intent to be filed, and did not state that CISDF intended to file an answer with the Superior Court or to retain Washington counsel. *See* App. 23; CP 65.

Further, under Washington law, the president of a corporation cannot represent a corporation. A corporation is required to be represented by an attorney. *Lloyd Enterprises, Inc. v. Longview Plumbing & Heating Co., Inc.*, 91 Wn.App. 697, 699, 958 P.2d 1035 (1998) (affirming the Superior Court's decision to strike an unrepresented corporation's "pro se" answer and enter default judgment against a corporation when the corporation failed to file an answer signed by an attorney); and *Cottringer v. State*, 162 Wn.App. 782, 787, 257 P.3d 667 (2011) (dismissing an unrepresented corporation's petition for review because "an individual who chooses to incorporate and thereby enjoy the benefits of the corporate form must also bear the attendant burdens"). Corporations are artificial entities that can only act through their agents and corporations appearing in court proceedings must be represented by an

attorney.” *Lloyd Enterprises, Inc.*, 91 Wn.App. at 701. Consequently, “the rules permitting pro se representation do not apply to corporations.” *Id.* at 699.

Based on the CRs and caselaw, CISDF’s letter was insufficient to constitute an answer. Yet, CISDF claims that Nataliya was required to bring a Motion to Strike against its letter. There was no answer for Nataliya to move to strike against. Further, Nataliya and her counsel had no obligation to file a letter from CISDF with the Superior Court.

b. *CISDF’s Letter Fails to Meet the Requirements for an Appearance.*

CISDF claims that it substantially complied with the appearance requirement in CR 55(a)(3) and CR 4(a)(3). A Superior Court’s determination that a party has appeared informally is reviewed for abuse of discretion. *Morin*, 160 Wn.2d at 753. Substantial compliance can be accomplished informally, meaning that the appearance does not need to be filed with the Superior Court. *Id.* at 749. Substantial compliance is met when the defendant (1) acknowledges the existence of the dispute in court, (2) shows an intent to defend, and, if the defendant is an entity, (3) the person who called or signed the correspondence is one who could represent the defendant. *Sacotte Construction, Inc. v. National Fire & Marine Insurance, Co.*, 143 Wn.App. 410, 415, 177 P.3d 1147 (2008);

Seek Systems, Inc. v. Lincoln Moving/Global Van Lines, Inc., 63 Wn.App. 266, 270, 818 P.2d 618 (1991).

CISDF's only communication with Nataliya prior to the filing of the Motion for Default was the letter sent to Nataliya's counsel. That letter was not sufficient to qualify as a notice of appearance. While it recognizes that a dispute is ongoing between Nataliya and CISDF, it does not recognize that the dispute is ongoing litigation in Washington because the letter was never filed with the court, did not show any intent to procure Washington counsel for representation, and did not directly respond to many of Nataliya's assertions of fact. Finally, the letter was signed by the President of CISDF, who cannot appear on CISDF's behalf in litigation. App. 23; CP 65. *See Seek Systems, Inc. v. Lincoln Moving/Global Van Lines, Inc.*, 63 Wn.App. at 270-71 (holding that a telephone call from Global's "director of customer relations" asserting a lack of fault and offer to settle was not an informal appearance because no mention was made of hiring Washington counsel or appearing in the suit); and *Professional Marine Co. v. Those Certain Underwriters at Lloyd's*, 118 Wn.App. 694, 709-11, 77 P.3d 658 (2003) (holding that the Superior Court did not abuse its discretion in determining that Lloyd's single letter to Professional Marine Co. was not an informal appearance because it did not show sufficient intent to defend). Therefore, Judge Melnick's decision not to

vacate the default judgment based on lack of notice is well informed and supported by law.

3. Nataliya Sent Notice of Her Intent to Move for a Default.

CISDF was not entitled to a Notice of Default because CISDF failed to properly appear in the action. Nevertheless, Nataliya's counsel served CISDF with the Notice of Default on October 24, 2011, which stated that he intended to apply for a default judgment and included a draft of the Motion for Default. App. 31-43; CP 184-213. Though Nataliya was not obligated to send a CR 55 (a)(3) notice, Attorney Adams drafted the Notice of Default to comply with the requirements of CR 55(a)(3) so that CISDF would understand the consequences of its failure to respond by filing an answer with the court. CR 55(a)(3) requires that a party which has appeared be served with "a written notice of motion for default and the supporting affidavit at least 5 days before the hearing on the motion." Even if a party has appeared in an action, if the party then fails to file a responsive pleading listed in CR 7(a), the party may still enter default. *See Tacoma Recycling v. Capitol Material Handling Co.*, 34 Wn.App. 392, 395, 661 P.2d 609 (1983) and *Duryea v. Wilson*, 135 Wn.App. 233, 238, 144 P.3d 318 (2006).

The Notice of Default sent by Attorney Adams and received by Bondarev, as Registered Agent and President of CISDF stated:

The time for CIS Development Foundation, Inc. to file an answer or appear in the above-reference case has passed. Therefore, I intend to file a motion for default and supporting affidavit within five days from the date of this letter, plus time for service, if you still have not filed an answer by that time. A draft copy of the motion for default and supporting declaration is attached.

App. 31; CP 35. The Notice of Default is clear and direct. It explains that because CISDF had not filed an answer Nataliya can file for a default judgment if CISDF fails to respond for an additional five days, plus time for service. The letter also enclosed a copy of the draft Motion for Default and supporting declarations. App. 31-43; CP 184-213.

Contrary to CISDF's assertion, CR 55(a)(3) does not require that the motion or declarations enclosed within the Notice of Default be signed. The CRs dictate that if the Motion for Default has been filed and a hearing on the Motion for Default set, then the Motion for Default must be signed and served at least five days before the hearing. However, no rule requires a plaintiff to seek a hearing for a default judgment. Here, Nataliya did not seek a hearing on her Motion for Default and no such hearing was held. Instead, she served the Notice of Default eight days prior to filing her Motion for Default.

In this case, the Motion for Default and supporting documents were not signed because they contained facts that had not yet come to pass, thus Attorney Adams could not sign under CR 11. For example, Attorney Adams' draft declaration states that CISDF failed to respond to the Notice of Intent to File a Motion and Order for Default, but Attorney Adams cannot sign a declaration under penalty of perjury that recites facts that have not yet occurred. On November 2, 2011, after those assertions became true, Attorney Adams signed the draft Motion for Default and supporting declaration. App. 7; CP 158.

CISDF's assertion that it was entitled to notice of the Motion for Default is incorrect. Regardless, Nataliya provided CISDF with the unambiguous Notice of Default, which stated that Nataliya intended to file a Motion for Default if CISDF did not file an answer. The Notice of Default met the requirements of and the policy behind CR 55(a)(3) under the circumstances that existed at the time of the Notice of Default.

Therefore, Judge Melnick did not abuse his discretion in refusing to vacate the default judgment based on lack of a Notice of Default. Nataliya served CISDF with the Notice of Default eight days before she filed the Motion for Default; CISDF failed to respond to both the Notice of Default and the Motion for Default. From the date of the Notice for Default until the Order of Default was entered by the Superior Court,

CISDF had 13 days to take substantive action. CISDF's own negligence and disregard of the Court's authority caused it to disregard Nataliya's warning.

4. CISDF Fails to Meet the White Factors.

To be entitled to an order vacating a default judgment CISDF must meet the factors set forth in *White v. Holm*, 73 Wn.2d 348, 438 P.2d 581 (1968). These factors are:

(1) That there is substantial evidence extant to support, at least prima facie, a defense to the claim asserted by the plaintiff;

(2) That the defendant's failure to timely appear in the action, and answer the opponent's claim, was occasioned by mistake, inadvertence, surprise or excusable neglect;

(3) That the defendant acted with due diligence after notice of entry of the default judgment; and

(4) That no substantial hardship will result to the plaintiff.

White, 73 Wn.2d at 352. The factors are of equal importance. *Prest v. American Bankers*, 79 Wn.App. 93, 99, 900 P.2d 595 (1995).

a. *CISDF Failed to Present a Conclusive Defense.*

To vacate a judgment, the first inquiry is whether there is substantial evidence to support, at least prima facie, a defense to the claim asserted by plaintiff. *Id. at 99*. If the defendant shows no more than a

prima facie defense then the reasons for the failure to timely appear will be scrutinized with great care. *Johnson v. Cash Store*, 116 Wn.App. 833, 841, 68 P.3d 1099 (2003)(finding that the defendant only established a prima facie defense and thus the trial court did not abuse its discretion in denying the motion to vacate because the corporation committed inexcusable neglect, if not willful noncompliance, when the store manager failed to forward to summons and complaint to corporate counsel).

In contrast, if the defendant demonstrates a “strong or virtually conclusive defense” then the court will not inquire as strongly into the reasons for the failure to appear and answer, provided the defendant’s failure to file was not willful and it timely moved to vacate. *Id.* The burden of proving substantial evidence is on defendant. *Pfaff v. State Farm Mutual Automobile Insurance Company*, 103 Wn.App. 829, 834, 14 P.3d 837 (2000).

Judge Melnick correctly held that CISDF may have established prima facie evidence of a defense, but did not establish a conclusive defense. App. 49; CP 379. To establish a prima facie defense, “the affidavits submitted . . . must precisely set out the facts or errors constituting a defense and cannot rely merely on allegations and conclusions.” *Johnson*, 116 Wn.App. at 847.

For its “conclusive” defense, CISDF repeatedly denies the allegations of Nataliya and alleges that she is lying. CP 136. The only evidence submitted by CISDF are alleged copies of bills of lading, showing that CISDF allegedly shipped containers to Saint Nikolas, attention Valery Russky in Kiev, Ukraine. CISDF did not present a declaration from Russky rebutting Nataliya’s claims, nor did it present evidence linking Nataliya’s donation with its payments to any shipping company, submit copies of its marketing materials explaining how the donation process worked, or show that the clothing picked out by Nataliya was the same as the clothing in the containers. CISDF “held the keys to its own defense,” yet produced primarily declarations full of mere allegations and conclusions. *See id.* Accordingly, it was not an abuse of discretion for Judge Melnick to find that CISDF failed to present a conclusive defense. App. 49; CP 379. In Plaintiff’s opinion, CISDF did not present sufficient evidence for a prima facie defense.

b. *CISDF’s Failure to File an Answer was Not Excusable Neglect.*

CISDF requests that this Court vacate the judgment against it based on excusable neglect and the principles of fundamental fairness. But CISDF cannot plead excusable negligence or equity. A party seeking to vacate a default judgment must come to court with clean hands. *Griggs v. Averbek Realty, Inc.*, 92 Wn. 2d 576, 582, 599 P.2d 1289 (1979). The

proceeding to vacate is “equitable in character” and relief is to be afforded “in accordance with equitable principles.” *Id.* “The orderly system of justice mandates compliance with judicial summons.” *Merrit v. Calhoun*, 46 Wn.App. 616, 619, 731 P.2d 1094 (1986). The guiding principle in a proceeding to vacate is whether justice is being done; justice is not done if continuing delays are permitted. *Id.* Nor can our responsive and responsible system of justice be dependent upon the whims of those who participate therein. *Griggs*, 92 Wn.2d at 581.

CISDF had ample notice and opportunity to retain Washington counsel and file an answer after its registered agent was personally served with the Summons and Complaint and again when it received the Notice of Default. Instead, through its President, Bondarev, CISDF chose not to act to retain Washington counsel.

CISDF asserts that it failed to file an answer or retain Washington counsel because it “is not sophisticated” in legal procedure and “did not understand.” CP 114. Even if this were true, this is not excusable neglect, but outright negligence. If a company fails to plead in response to a complaint when it received service of process then the company’s failure to adequately respond is deemed due to inexcusable neglect. *Johnson*, 116 Wn.App. at 848.

Other courts have denied requests to vacate a default judgment when actual errors—instead of mere ignorance and lack of responsibility—have prevented a defendant from filing an answer. For example, in *Conner v. Universal Utilities*, 105 Wn.2d 168, 712 P.2d 849 (1986) and *Harter v. King County*, 11 Wn.2d 583, 119 P.2d 919 (1941), the court denied the request to vacate the default judgments. Both defaults were the result of internal mix-ups concerning the defense against the complaint. In *Conner v. Universal Utilities*, 105 Wash.2d 168, the Washington Supreme Court upheld the appellate court’s reversal and dismissal of a motion to vacate based on the defendant’s receipt of proper notice and failure to take action until the defendant successfully collected upon the judgment. The Court based its decision on the fact that plaintiff correctly served the registered agent of the corporation; even though the corporation’s attorney lost the pleadings and the corporation acted promptly after it became aware of the default judgment. *Id.* at 171.

In *Harter v. King County*, 11 Wn.2d 583, the court found that because service had been properly made under the statute the judgment should not be vacated, even though the entity in charge of the defense never received notice and there was no allegation of actual fraud. *Id.* at 593-599. *Harter* and *Conner* show that CISDF is not eligible for relief

under the principles of equity and Judge Melnick did not abuse his discretion in denying CISDF's Motion to Vacate.

Moreover, this was not the first complaint that was served on CISDF's registered agent. *See* App. 7-8; CP 158-159. Bondarev understood the importance of responding to the Summons and Complaint. Nataliya and her counsel gave CISDF no reason to believe that CISDF should not take the case seriously. CISDF's election to ignore its duties as a litigant was CISDF's prerogative.

c. *CISDF's Failure to Obtain Counsel and File an Answer was Not the Result of a Clerical Mistake or Misconduct by Nataliya's Counsel.*

CISDF attempts to characterize the letter that Nataliya's counsel received from CISDF on October 3, 2011, as an answer or an appearance in the case.

The letter cannot be considered an answer or appearance because corporations can only appear through legal counsel and an answer is required to be filed with the court. *See* discussion *supra* pp. 12. Nonetheless, Nataliya sent CISDF the Notice of Default, which only would have been required if CISDF had appeared in the litigation. That Notice of Default clearly stated that Nataliya intended to file the Motion for Default if CISDF persisted in not filing an answer. *See* discussion *supra* pp. 16.

Yet, in furtherance of its assertion, CISDF accuses Nataliya's counsel, Attorneys Adams and Wong, of misconduct. Conversely, Judge Melnick found in his Decision that "plaintiff bent over backwards to accommodate the defendant [and] basically told the defendant's registered agent and out-of-state attorney how to cure the defect." App. 49; CP 379.

The purported answer was properly treated under the Civil Rules; it was not overlooked due to a clerical mistake or hidden by Attorney Adams with a nefarious intent to deceive the Superior Court. Attorney Adams sent the Notice of Default to CISDF to ensure that CISDF was aware of Nataliya's intent to file the Motion for Default. He also informed the Superior Court of CISDF's letter. CISDF argues that Attorney Adams, as counsel for the plaintiff, Nataliya, was obligated to file CISDF's letter with the court. This assertion is directly in contrast with the duty of an attorney to act in the best interest of the attorney's client. On appeal, CISDF asks this Court to substitute its judgment for Judge Melnick's and find Attorney Adams and Wong guilty of misconduct, when Judge Melnick found that "plaintiff did all she could to have the case heard on the merits." App. 50; CP 380.

d. *Attorney Thomson Acted Promptly for CISDF.*

CR 60 requires that defendant act with due diligence after discovery of a default judgment. Due diligence contemplates prompt

filing of a motion to vacate. *Shepard Ambulance, Inc. v. Helsell, et.al.*, 95 Wn.App. 231, 243, 974 P.2d 1275 (1999). After the default judgment was taken and CISDF finally engaged Washington counsel, Attorney Thomson promptly contacted Nataliya's counsel and began the process of filing the Motion to Vacate.

However, a default judgment "is proper when the adversary process has been halted because of an essentially unresponsive party." *Johnson v. Cash Store*, 116 Wn.App. 833, 848, 68 P.3d 1099 (2003). CISDF admits that its registered agent was personally served with the Summons and Complaint in mid-August and received Nataliya's Notice of Default, yet it failed to act in a timely manner. As a non-responsive defendant, CISDF is not entitled to the relief it requests.

e. *Nataliya Would Suffer Substantial Hardship if the Default Judgment were Vacated.*

CISDF claims that Nataliya would suffer no undue hardship because she would merely need to prove the merits of her case at trial. CISDF minimizes the lengths to which Nataliya has gone to ensure her funds were used to benefit Ukrainian charities.

Nataliya has expended considerable time and resources in ensuring that the money she donated to CISDF, a New Jersey nonprofit, was used as promised. She travelled to New York to pick out the clothes herself.

App. 2; CP 151. She placed numerous telephone calls to CISDF and Russky for follow up information, hired an attorney in Kiev to follow up with St. Nicolas, filed this lawsuit, paid for personal service on CISDF's registered agent, sent a courtesy Notice of Default prior to filing her Motion for Default, and has had to deal with CISDF's Motion to Vacate and this frivolous appeal. App. 1-4; CP 150-153. For more than two years now Nataliya has attempted to obtain a complete and honest answer from CISDF. Instead of responding to her queries, CISDF has chosen to ignore her at every turn and now minimizes the lengths to which she has gone to monitor their use of her donation.

Nataliya has suffered real harm from CISDF's actions and decisions not to act. In dealing with this case Nataliya has incurred thousands of dollars in attorneys' fees, spent countless hours attempting to contact CISDF, and suffered emotional distress; all of which could have been avoided if Bondarev, or another agent of CISDF, had simply returned her phone calls in summer of 2010.

Instead, now that CISDF feels like participating in the judicial process, CISDF asks this Court to ignore Nataliya's selfless hard work and find that she would not be inconvenienced by being forced to spend additional time and attorneys' fees to try the case on the merits. Such a request is untenable in light of Nataliya's substantial hardship.

5. Nataliya Properly Served CISDF Under RCW 4.28.180.

Under RCW 4.28.180, personal service of summons may be made upon a party outside of the state. Personal service outside of the state is valid only when an affidavit is made and filed to the effect that service cannot be made within the state. RCW 4.28.185(4). CISDF's registered agent in New Jersey, its principal place of business, was personally served with true copies of the Summons, Complaint, and Declaration of Ronald T. Adams for Out of State Personal Service (the "Declaration") on August 19, 2011. App. 9-22; CP 1-14. However, CISDF contends that Plaintiff's service was insufficient because the Declaration, which conforms to the requirements of RCW 4.28.185(4), was not identical to a form proposed by a practice treatise.

In its argument that the Declaration is invalid, all of the cases cited by CISDF regarding RCW 4.28.185(4) concern situations where the separate affidavit was filed after the judgment was obtained or never filed at all.

In *Sharebuilder Securities, Corp. v. Hoang*, the case defendant would have us believe is the seminal case on the matter, the plaintiff claimed substantial compliance with the statute when counsel filed only the process server's standard affidavit of service, showing service on Hoang in California. 137 Wn.App. 330, 153 P.3d 222 (2007). The

plaintiff did not file a separate affidavit stating that service could not be had in Washington. The court found that the process server's affidavit was not sufficient because "the mere statement that Hoang was served at her California residence does not lead to the logical conclusion that she could not be served within the state." *Id.* at 334-35. In stating that the affidavit filed with the court should describe the circumstances that prevent in-state service, the court cited to a Washington Practice Treatise, not to a statute, legislative history, or prior case law. Specifically, the court cited to 27 Marjorie Dick Rombauer, Washington Practice: Creditors' Remedies—Debtors' Relief § 5.4 at 484 (1998). The court also recognized that it is well established that "substantial, rather than strict, compliance with RCW 4.28.185(4) is permitted." *Sharebuilder Securities, Corp.*, 137 Wn.App. at 335. *See also Whitney v. Knowlton*, 33 Wn. 319, 322, 74 P. 469 (1903) (finding that "[a]mendable defects . . . have not been held fatal unless injury directly caused thereby has been shown, and it seems to us now that this is the just rule"). Substantial compliance requires that it can be logically concluded that service could not be had within the state. *Sharebuilder Securities, Corp.*, 137 Wn.App. at 335. In contrast, Attorney Adams filed a separate declaration that specifically stated that service could not be had upon CISDF within Washington and

CISDF has not alleged or introduced any evidence of injury from the substantial compliance.

CISDF also cites *Morris v. Palouse River and Coulee City Railroad, Inc.*, 149 Wn.App. 366, 203 P.3d 1069 (2009), however, the court does not describe the two prejudgment affidavits of service, except to state that they did not meet the statutory requirements of RCW 4.28.080(4). Based on the opinion, the two affidavits could have been two versions of the process server's standard affidavit of service, one showing that service was not made at the address on the Washington Secretary of State website and the other showing service in Idaho. Because the court does not describe the two affidavits, this case is too vague to be used to come to a decision in this case.

In *Bar v. Citizens Interbank of Tampa, Florida*, 96 Wn.2d 692, 635 P.2d 441 (1981), the court held that a prejudgment affidavit was sufficient when filed by a defendant instead of a plaintiff. The court was not reviewing the contents of the affidavit for sufficiency under the statute.

Plaintiff did not find a case where the court analyzed whether the requirements of "substantial compliance" were met when a separate affidavit was filed by plaintiff's counsel stating that service could not be had within Washington. However, it can be demonstrated that Nataliya substantially complied with the requirements of RCW 4.28.185(4) by

applying the court's reasoning in *Sharebuilder Securities, Corp. v. Hoang* to this case. Attorney Adams' Declaration stated that he is one of the attorneys for Nataliya and, based on personal knowledge gained in this capacity, he could not serve the defendant within Washington State. App. 6; CP 157. Through this statement, Attorney Adams established that service could not be had against CISDF in Washington. While it may have been better to describe the efforts made to locate CISDF within Washington State for service, the Declaration—taken together with the Complaint and Summons with which it was served and filed—lead to the logical conclusion that service could not have been had within the state.

Attorney Adams acted with the due care of all attorneys in searching for service information for CISDF in conformance with legal industry standards, including checking the Washington State Secretary of State's website. App. 6; CP 157. In addition, the Complaint, Motion for Default, and the declarations in support of the Motion for Default all state that CISDF is a New Jersey Corporation and do not mention a physical location in Washington, again giving rise to the logical inference that CISDF does not have a physical location in Washington. Finally, the Declaration of Service signed by the process server states that service was had in New Jersey upon the registered agent, Bondarev (App. 22; CP 14), and all references to service in the Motion for Default reference service of

CISDF's registered agent. All in all, Nataliya substantially complied with RCW 4.28.185(4) by filing the Declaration and based upon the other documents filed in this case prior to the judgment.

Finally, CISDF has neither alleged nor suffered harm from Nataliya's method of service: CISDF could not have been served in Washington.

6. Conclusion.

CISDF chose to waste its opportunity to dispute Nataliya's claims prior to entry of the default judgment. Instead, CISDF decided to gamble on Nataliya not obtaining a default judgment. Because it lost that gamble, CISDF brought a Motion to Vacate arguing that its conduct amounted to excusable neglect or that it was tricked by Nataliya's counsel.

After reviewing all the evidence before him, Judge Melnick denied CISDF's Motion to Vacate, explicitly finding that "plaintiff did all she could to have the case heard on the merits and the defendant did not comply." App. 50; CP 380. Because "a responsible system demands that parties comply with the legal process," this Court should affirm Judge Melnick's Decision. App. 50; CP 380. Judge Melnick carefully and logically reached a tenable conclusion in denying CISDF's Motion to Vacate.

B. The Superior Court Properly Denied CISDF's Motion to File an Amended Answer.

If this Court chooses to reverse Judge Melnick's decision to deny CISDF's Motion to Vacate, Nataliya requests that this Court remand the remaining issues. Due to his holding on the Motion to Vacate, Judge Melnick did not reach CISDF's motion to amend the answer or request for attorneys' fees.

Plaintiff does not deny that CISDF needs to file an answer with the court if the judgment is vacated. However, justice would not be served by allowing Defendant to file its proposed "amended" answer. The proposed "amended" answer is materially insufficient because it fails to comply with CR 8(b) and (e). *See* CP 86-102. Further, CISDF has refused to revise its proposed answer in response to Nataliya's objections.¹ Therefore, if this Court reverses Judge Melnick's decision to deny CISDF's Motion to Vacate, this Court should remand this issue to Judge Melnick for review.

¹ The defects of CISDF's proposed "amended" answer are addressed in the Memorandum in Opposition. Plaintiff does not think it necessary to repeat those objections here. *See* CP 267-68.

C. Judge Melnick Relied Solely on Noncontested Facts, and the Alleged Inadmissible Hearsay was Not Hearsay or was Admissible Under an Exception.

Defendant broadly alleges that every statement by Plaintiff or Plaintiff's counsel that it does not like is inadmissible hearsay. This is simply not true and is a meritless assignment of error.

1. Standard of Review.

The standard of review of the admission of evidence is abuse of discretion. *Brundridge v. Fluor Federal Services, Inc.*, 164 Wn.2d 432, 450, 191 P.3d 879 (2008). A trial court abuses its discretion only when it takes a view that no reasonable person would take. *Id.* However, whether a rule of evidence applies in a given factual situation is a question of law reviewed de novo. *State v. Chambers*, 134 Wn.App. 853, 858, 142 P.2d 668 (2006).

2. Judge Melnick did not rely on the statements.

Judge Melnick did not abuse his discretion in denying CISDF's motion to strike the complained about statements. In his Decision, Judge Melnick relies on a core of essential facts that were uncontested. App. 47; CP 377. CISDF does not allege that Judge Melnick relied upon any of the disputed statements in support of his Decision, nor does it allege any injury from Judge Melnick's Decision ignore the statements instead of striking them. Judge Melnick's decision to rely exclusively on the

uncontested essential facts was not an abuse of his discretion and, in essence, granted CISDF's motion to strike. Even if the statements were hearsay, the error was harmless because it did not change the Decision. *See Brundridge*, 164 Wn.2d at 452. Therefore, even if error occurred, it was harmless and is insufficient as a basis to reverse Judge Melnick's Decision.

3. Attorney Ross and Russky's statements were not hearsay.

Hearsay is a statement, other than one made by the declarant, offered into evidence to prove the truth of the matter asserted. Rule of Evidence ("ER") 801(c); *Chambers*, 134 Wn.App. at 858-59 (finding that the statements made by an alleged agent were not used to prove the truth of the matter asserted and were therefore not hearsay and admissible evidence). Under this rule, the statements of Attorney Ross discussed in the Declaration of Caitlin Wong are not hearsay. The statements made by Attorney Ross are not all used to prove the truth of Attorney Ross's statements. See App. 44-46; CP 147-149. Instead, the majority of statements are used to prove that CISDF had actual knowledge of the lawsuit and understood it should contact an attorney or otherwise act to defend itself. The dialogue also supports Judge Melnick's finding that Plaintiff's counsel is not guilty of misconduct and "bent over backwards to accommodate the defendant." App. 49-50; CP 379-80. Because the

statements were not hearsay, Judge Melnick did not abuse his discretion in allowing the admission of the dialogue between Attorney Ross and Attorney Wong into evidence.

A statement is also not hearsay if the statement is offered against a party and is “a statement by the party’s agent or servant acting within the scope of the authority to make the statement for the party.” ER 801(d)(2). The statements made by Russky fall into this category if she was an agent of CISDF. CISDF accepted Nataliya’s donation and, in doing so, acted as though Russky was, at a minimum, authorized to solicit donations on behalf of CISDF. App. 2-3; CP 151-52. The solicitation of donations necessarily contemplates representations regarding the use of the funds donated and basic information about the mission and purpose of CISDF. Thus, CISDF’s actions proved Russky’s agency. Therefore, Judge Melnick’s admission of Russky’s statements as evidence was not an abuse of discretion.

4. Paragraph 11 of Adam’s Declaration is Admissible.

Paragraph 11 of Ronald T. Adams’ Declaration and its accompanying exhibits were relevant. In support of its argument that failing to file an answer was excusable neglect, CISDF argued that its principal, Bondarev, is “not sophisticated in legal procedure, or court matters, and did not understand or know that Plaintiff’s counsel could, or

would, attempt to enter a default judgment.” CP 115. Paragraph 11 of Ronald T. Adams’ Declaration submits evidence that CISDF and Bondarev’s assertion is false. App. 7-8; CP 158-159. CISDF had a prior default judgment entered against it. App. 7-8; CP 158-159 and CP 246-250. The default judgment is a matter of public record and therefore fits into exceptions from hearsay under ER 803(6) and (8)). The news article and the prior default judgment are also admissible under exception from hearsay under ER 803(21) and (23)) as character evidence and general history of CISDF and Bondarev, which is relevant to their truthfulness.

In sum, Judge Melnick chose to avoid this issue by solely relying on uncontested facts in his Decision. CISDF was not injured by Judge Melnick’s decision to rely solely on uncontested facts. Moreover, Judge Melnick’s decision, in his discretion, not to grant CISDF’s motion to strike was not reversible error.

D. Judge Melnick Properly Denied CISDF’s Motion for Attorneys’ Fees and Costs.

CISDF requested an award of its attorneys’ fees and costs under the Washington Long Arm Statute, RCW 4.28.185(5). Such a request is inappropriate because CISDF has not asserted that it incurred any extra legal expenses from litigating the case in Washington. The statute states:

In the event the defendant is personally served outside the state on causes of action

enumerated in this section, and prevails in the action, there may be taxed and allowed to the defendant as part of the costs of defending the action a reasonable amount to be fixed by the court as attorneys' fees.

In other words, a defendant may be awarded attorneys' fees and costs only upon prevailing in the action. Merely prevailing upon a motion is insufficient.

Further, an award of fees under RCW 4.28.185(5) "is discretionary and is limited to the amount necessary to compensate a foreign defendant for the added costs of litigating in Washington." *Payne v. Saberhagen Holdings, Inc.*, 147 Wn.App. 17, 36, 190 P.3d 102 (2008). *See also State v. O'Connell*, 84 Wn.2d 602, 606-07, 528 P.2d 988 (1974) (Supreme Court exercised its discretion to deny a request for attorneys' fees where there was nothing to indicate that the length or expense of the litigation was affected by the location of the forum); and *Scott Fetzer Co. v. Weeks*, 114 Wn.2d 109, 120, 786 P.2d 265 (1990) ("a prevailing defendant should not recover more than an amount necessary to compensate him for the added litigative burdens resulting from the Plaintiff's use of the long-arm statute").

Further, CISDF failed to assert a single argument that it incurred any additional burdens due to litigating this case in Washington instead of a different forum. After reviewing the facts of this case, Judge Melnick

chose not to vacate the default judgment and denied CISDF's motion for fees. Defendant's argument on appeal does not cite any new authority or facts unknown to Judge Melnick. Judge Melnick did not abuse his discretion in denying CISDF's motion for fees and costs; CISDF is not entitled to fees and costs under the relevant statute and case law.

E. Response to Request for Fees and Costs.

CISDF's request for attorneys' fees and costs on appeal reiterates its request for attorneys' fees made as part of its Motion to Vacate. For the same reasons articulated in Section D of the Argument above, this Court should deny CISDF's request for attorneys' fees and costs on appeal.

REQUEST FOR FEES AND COSTS

Nataliya requests an award of her reasonable attorneys' fees and costs incurred on appeal, pursuant RAP 18.1(a) and CR 60(b). Such an award is reasonable in light of the burden imposed upon Nataliya by CISDF's failure to respond to her complaint as required under Washington law, and in defending against this frivolous appeal. An award of attorneys' fees and costs upon appeal is appropriate because CISDF failed to include new arguments or rebut prior arguments made by Plaintiff with relevant case law. For example, CISDF failed to provide authorities on appeal that rebut *Payne v. Saberhagen Holdings, Inc.*, *State v. O'Connell*,


and *Scott Fetzer Co. v. Weeks* or even to address the argument supported by those cases, even though Plaintiff cited them in her Memorandum in Opposition. CP 268. Therefore, Nataliya should be awarded her reasonable attorneys' fees and costs on appeal.

CONCLUSION

For the foregoing reasons, this Court should find that the Superior Court did not abuse its discretion in denying CISDF's Motion to Vacate and affirm the Superior Court's Decision.

DATED, the 3rd day of August, 2012.

BLACK HELTERLINE LLP

By: 

Ronald T. Adams, WSBA No. 36013

rta@bhlaw.com

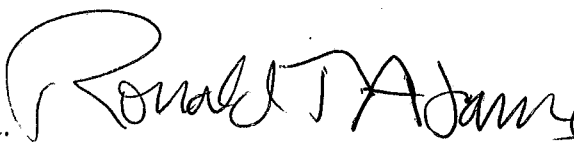
Fax: (503) 224-6148

Of Attorneys for Respondent

CERTIFICATE

I certify that I mailed and e-mailed a copy of the foregoing Brief of Respondent to Terry E. Thomson, attorney for Appellant/Defendant, at tthom999@aol.com and 500 Union Street, Suite 500, Seattle, WA 98101, postage prepaid on August 3, 2012.

BLACK HELTERLINE LLP

By: 

Ronald T. Adams, WSBA No. 36013
Of Attorneys for Respondent

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SCOTT G. WEBER, CLERK
CLARK COUNTY

IN THE SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY

NATALIYA MAKARENKO, an individual,

Plaintiff,

v.

CIS DEVELOPMENT FOUNDATION,
INC., a New Jersey non-profit corporation,

Defendant.

Case No. 11-2-03115-6

DECLARATION OF NATALIYA
MAKARENKO IN SUPPORT OF
PLAINTIFF'S MOTION FOR FEES AND
COSTS AND MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR ORDER TO SHOW CAUSE

I, Nataliya Makarenko, being sworn, depose and say:

1. I am the plaintiff in the above-entitled matter and make this declaration on personal knowledge.

2. I live in Clark County, Washington.

3. Prior to May of 2010, I was approached by Valery Russky from Saint Nikolas, a charitable organization located in Kiev, Ukraine.

4. Valery Russky told me about CIS Development Foundation, Inc. ("CISDF"), its mission, and its partnership with Saint Nikolas. I was told that CISDF solicited donations all over the United States and the Commonwealth of Independent States (including

.....

1 Russia, Ukraine, Belarus, Kazakhstan, Georgia, Latvia, and other republics of the former Soviet
2 Union) ("CIS").

3 5. I spoke with both Valery Russky and representatives of CISDF about
4 donating to CISDF and how it would use my funds. Specifically, they told me that I could
5 donate funds to CISDF and that CISDF would use those donated funds to purchase clothing and
6 ship the clothes to Saint Nikolas, which is located in Kiev. Saint Nikolas would then distribute
7 the clothes to other charities in and around Kiev.

8 6. Based on the representations of Valery Russky and representatives of
9 CISDF that my donation would be used in the manner I directed, I decided to donate \$46,500 to
10 CISDF in early May of 2010. I wanted my donation to go to the purchase and shipment of
11 clothes to Saint Nikolas, because I have family that lives near Kiev, Ukraine.

12 7. My brother, Sasha Makarenko, lives near Kiev. When I told him about
13 CISDF and Saint Nikolas, he offered to store and distribute the donated clothing to the smaller
14 nearby charities for Saint Nikolas. Valery Russky, on behalf of Saint Nikolas and CISDF,
15 accepted Sasha's offer of assistance.

16 8. In May of 2011, while five months pregnant, I flew from Washington state
17 to New Jersey, via New York, to pick out the clothes to be shipped from CISDF. While in New
18 Jersey, I picked out approximately \$46,500 of clothes to be shipped to Saint Nikolas. The sole
19 reason for my visit to New Jersey was to pick out clothes to be sent to Saint Nikolas. My travel
20 expenses totaled \$4,000.

21 9. On May 5, 2010, I initiated a wire transfer from my local Bank of America
22 branch in Clark County, Washington to CISDF's account at PNC Bank for \$46,500. A copy of
23 the confirmation of the wire transfer is attached as Exhibit A.

24 10. CISDF confirmed that it received the funds by a letter dated May 10,
25 2010, which acknowledged my donation of \$46,500. A copy of that letter is attached as
26 Exhibit B.

1 11. Over the next few months, I contacted CISDF and Saint Nikolas numerous
2 times to find out the status of the shipment of clothes. I did not receive any further
3 correspondence or communications from CISDF regarding my donation or how the funds were
4 used by CISDF.

5 12. My brother told me that he also tried to contact Saint Nikolas, and that
6 Valery Russky, the representative of Saint Nikolas, finally called Sasha to meet at a warehouse
7 and inspect the clothes. Sasha told me that he went to the warehouse to inspect the clothes and
8 make arrangements to move the clothes to another facility. Valery presented Sasha with a
9 sample of the clothes allegedly received from CISDF. Sasha told me that the sample of the
10 clothes he was shown were of substantially lesser quality than the ones I had chosen for the
11 shipment. After his visit at the warehouse, Sasha arranged for a different facility to store the
12 clothes.

13 13. Sasha and I have repeatedly contacted Valery Russky and Saint Nikolas to
14 arrange for the clothes to be moved but have received no response.

15 14. I have also repeatedly contacted CISDF to arrange for the clothes to be
16 picked up from Saint Nikolas by Sasha but have also received no response from CISDF.

17 15. Finally, in April of 2011, I decided to hire a law firm in Kiew, Ukraine,
18 Sergii Koziakov and Partners, to contact Saint Nikolas and inquire about the clothes. When the
19 local attorney contacted Valery Russky, the representative of Saint Nikolas, Valery Russky
20 denied all knowledge of CISDF, denied all knowledge of Nataliya and Sasha, and denied that
21 Saint Nikolas ever received a shipment of clothing from CISDF.

22 Dated this 4th day of January, 2012.

23 **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF**
24 **THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.**

By: 
Nataliya Makarenko, Plaintiff

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SCOTT G. WEBER, CLERK
CLARK COUNTY

IN THE SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY

NATALIYA MAKARENKO, an individual,

Plaintiff,

v.

CIS DEVELOPMENT FOUNDATION,
INC., a New Jersey non-profit corporation,

Defendant.

Case No. 11-2-03115-6

DECLARATION OF RONALD T. ADAMS
IN SUPPORT OF PLAINTIFF'S MOTION
FOR FEES AND COSTS AND
MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION FOR ORDER TO
SHOW CAUSE WHY DEFAULT
JUDGMENT SHOULD NOT BE
VACATED, FEES AND COSTS
AWARDED, AND LEAVE TO AMEND
GRANTED

I, Ronald T. Adams, being sworn, depose and say:

1. I am one of the attorneys for Plaintiff Nataliya Makarenko in the above-entitled matter and make this declaration on personal knowledge gained in this capacity.

2. On August 8, 2011, plaintiff Nataliya Makarenko of Clark County, Washington filed a Complaint for a money judgment against defendant CIS Development Foundation, Inc. ("CISDF"), a New Jersey non-profit corporation.

3. The registered agent for CISDF, Alexander Bondarev, was personally served with true copies of the Summons and Complaint on August 19, 2011. A true copy of the

22

1 Summons and Complaint served upon the Registered Agent for CISDF is attached hereto as
2 Exhibit A. A true copy of the proof of service is attached hereto as Exhibit B.

3 4. CISDF could not be served in Washington because CISDF does not have a
4 registered agent in Washington and does not have a physical location in Washington. In
5 preparing the Complaint, I directed my staff to attempt to locate a place where service could be
6 had against CISDF in Washington. This included directing an associate at my firm, Caitlin
7 Wong, to review CISDF's filings with the Washington Secretary of State and, if service could
8 not be done in Washington, to determine where CISDF was principally located so that service
9 would be at made upon CISDF's main business location. When it became apparent that CISDF
10 would have to be served outside of Washington, I directed Attorney Wong to prepare a draft of
11 the Declaration of Ronald T. Adams for Out of State Personal Service, signed it, and filed it with
12 the court. A copy of that Declaration is attached hereto as Exhibit C.

13 5. On October 3, 2011, I received a letter from Alexander Bondarev, the
14 Chairman of the Board for CISDF. It responded to the allegations in my client's Complaint by
15 denying all of the allegations. It did not state whether CISDF intended to file an appearance, did
16 not appear to be filed with the court, and was not labeled or formatted as an answer. A copy of
17 that letter is attached hereto as Exhibit D.

18 6. After receiving the letter from CISDF, I monitored the court's docket to
19 see if CISDF filed the letter with the court. CISDF did not file the letter and I received no other
20 communications from CISDF or counsel for CISDF during this time period. Nor did CISDF file
21 an answer or notice of appearance with the court.

22 7. On October 24, 2011, I arranged for service by mail of the Notice of Intent
23 to File a Motion for Order of Default, along with a draft of Plaintiff's Motion for Order of
24 Default and General Judgment of Default against Defendant. A copy of the Notice of Intent to
25 File a Motion for Order of Default is attached hereto as Exhibit E. I arranged for the Notice to
26 be served upon the registered agent of CISDF, Alexander Bondarev, at the address given by the

1 New Jersey Secretary of State website and upon Alexander Bondarev as Chairman of CISDF's
2 Board of Directors at the address contained in the letterhead of the correspondence I received
3 from Alexander Bondarev. I did not sign the drafts of Plaintiff's Motion for Order of Default
4 and General Judgment of Default against Defendant, because it contained within it facts that had
5 not yet come to pass, and therefore I could not certify that it was correct at the time it was mailed
6 under CR 11.

7 8. On November 2, 2011, after hearing nothing from CISDF for nine days, I
8 filed a signed copy of Plaintiff's Motion for Order of Default and General Judgment of Default
9 against Defendant. The motion was filed by mail. A copy of the cover letter to the Clark County
10 Clerk, Plaintiff's Motion for Order of Default and General Judgment of Default Against
11 Defendant, and Plaintiff's Proposed Order of Default and Judgment of Default are attached as
12 Exhibit F.

13 9. On November 3, 2011, I received a voice-mail message from Alex Róss,
14 an attorney from New York, who stated that he had received the pleadings in this case and had
15 some questions. I was involved in depositions for a different case and directed my assistant to
16 have Attorney Wong call him back. Alex Ross did not contact me with any additional questions
17 after speaking with Attorney Wong.


18 10. On November 22, 2011, I was contacted by Attorney Thomson, who is
19 Washington counsel for CISDF. We engaged in negotiations to vacate the default judgment but
20 could not reach an agreement as to terms or payment of attorney fees for the necessity of taking
21 the default judgment. Therefore, the negotiations terminated. The negotiations were drawn out
22 due to my trial schedule and the month between when Attorney Thomson contacted me and the
23 time of the filing of the Motion should not be held against CISDF.

24 11. Attached as Exhibits G and H are copies of a news article and the docket
25 in PACER regarding *Califon Productions, Inc. v. Networking Dimension Corp, et al.*, Case No.
26 2:97-cv-08408-AAH-RC in the United States District Court, Central District of California. The

1 plaintiff in that case alleged that CISDF was guilty of trademark infringement and bootlegging.
2 It appears that CISDF was served with a complaint in that action and failed to respond to the
3 court.

4 Dated this 4th day of January, 2012.

5 **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF**
6 **THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.**

7
8 By: 
9 Ronald T. Adams, WSBA No. 36013
10 rta@bhlaw.com
11 (503) 224-5560
12 Of Attorneys for Plaintiff
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COPY
Original Filed

AUG 08 2011

Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF WASHINGTON

FOR CLARK COUNTY

NATALIYA MAKARENKO, an individual,

Plaintiff,

v.

CIS DEVELOPMENT FOUNDATION,
INC., a New Jersey non-profit corporation,

Defendant.

11-2-03115-6

Case No.:

SUMMONS

TO: CIS Development Foundation, Inc.
c/o Alexander Bondarev, Registered Agent
8 Stallion Drive
Manalapan, NJ 07726

TO THE DEFENDANT: A lawsuit has been started against you in the above-entitled court by Nataliya Makarenko, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with the summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons if served within the State of Washington, or within 60 days after service of this summons if served outside the State of Washington,

Page 1 – SUMMONS

Exhibit A
Page 1 of 13

BLACK 10-000000160

805 S.W. Broadway, Suite 1900
Portland, OR 97205
(503) 224-5560

1 excluding the day of service, or a default judgment may be entered against you without notice.
2 A default judgment is one where plaintiff is entitled to what he asks for because you have not
3 responded. If you serve a notice of appearance on the undersigned person, you are entitled to
4 notice before a default judgment may be entered.

5 Plaintiff filed this lawsuit with the court on August 8, 2011. As such, you need
6 not demand that it be filed.

7 If you wish to seek the advice of an attorney in this matter, you should do so
8 promptly so that your written response, if any, may be served on time.

9 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of
10 the State of Washington.

11 DATED this 8th day of August, 2011.

12 BLACK HELTERLINE LLP

13
14 By: 

Ronald T. Adams, WSBA No. 36013
805 SW Broadway, Suite 1900
Portland, OR 97205-3359
E-mail: rta@bhlaw.com
(503) 224-5560
Of Attorneys for Plaintiff

COPY
Original Filed

AUG 08 2011

Scott G. Weber, Clark, Clark Co.

IN THE SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY

NATALIYA MAKARENKO, an individual,

Plaintiff,

v.

CIS DEVELOPMENT FOUNDATION,
INC., a New Jersey non-profit corporation,

Defendant.

Case No.: **11-2-03115-6**

SUMMONS

TO: CIS Development Foundation, Inc.
77 Milltown Road, Suite 8C
East Brunswick, NJ 08816

TO THE DEFENDANT: A lawsuit has been started against you in the above-entitled court by Nataliya Makarenko, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with the summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons if served within the State of Washington, or within 60 days after service of this summons if served outside the State of Washington,

1 excluding the day of service, or a default judgment may be entered against you without notice.
2 A default judgment is one where plaintiff is entitled to what he asks for because you have not
3 responded. If you serve a notice of appearance on the undersigned person, you are entitled to
4 notice before a default judgment may be entered.

5 Plaintiff filed this lawsuit with the court on August 8, 2011. As such, you need
6 not demand that it be filed.

7 If you wish to seek the advice of an attorney in this matter, you should do so
8 promptly so that your written response, if any, may be served on time.

9 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of
10 the State of Washington.

11 DATED this 8 day of August, 2011.

12 BLACK HELTERLINE LLP

13
14 By: 

Ronald T. Adams, WSBA No. 36013
805 SW Broadway, Suite 1900
Portland, OR 97205-3359
E-mail: rta@bhlaw.com
(503) 224-5560
Of Attorneys for Plaintiff

COPY
Original Filed
AUG 08 2011
Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY

NATALIYA MAKARENKO, an individual,

Plaintiff,

v.

CIS DEVELOPMENT FOUNDATION,
INC., a New Jersey non-profit corporation,

Defendant.

11-2-03115-6

Case No.:

COMPLAINT
(FRAUD)

Plaintiff Nataliya Makarenko, for her complaint against defendant CIS
Development Foundation, Inc., alleges as follows:

PARTIES

1.

Nataliya Makarenko is an individual residing in Clark County, Washington.

Nataliya is of Ukrainian descent and her brother, Sasha Makarenko, resides in or around Kiev,
Ukraine.

/////

2.

CIS Development Foundation, Inc. ("CISDF"), is a New Jersey non-profit corporation, with its principal place of business located in East Brunswick, New Jersey.

3.

CIS stands for the Commonwealth of Independent States, which includes the Russian Federation, Ukraine, Republic of Belarus, Republic of Kazakhstan, Georgia, Latvia, Estonia, Republic of Uzbekistan, and other republics of the former Soviet Union.

JURISDICTION AND VENUE

4.

Pursuant to RCW 2.08.010, the Superior Court for Washington has jurisdiction over this case.

5.

Plaintiff is a resident of Clark County, Washington.

6.

Defendant solicits and accepts donations from all over the United States, including Washington state.

7.

Pursuant to RCW 4.12.025, this case is properly brought in Klickitat County.

CAUSE OF ACTION – FRAUD

8.

Plaintiff incorporates the allegations and assertions of fact within paragraphs 1 - 7 set forth above as if fully set forth herein.

9.

According to its website, CISDF is dedicated to assisting in the revival of Russia's (and other Republics of the Former Soviet Union) economy and cultural heritage for the mutual benefit of America and Russia by sending them non-monetary aid.

10.

According to its website, CISDF "is an American non-profit organization that, for the mutual benefit of America and Russia, assists in the revival of Russia's (and other Republics of the Former Soviet Union) economy and cultural heritage by sending non-monetary aid."

11.

CISDF claims that one of its goals is "to assist in the economic development of the CIS, which is temporarily in dire straits, by donating humanitarian and technical aid (medical supplies and tools, pharmaceutical supplies and provisions, food, clothes, and household items, office equipment, food processing machinery, etc.). All assistance is shipped to CISDF's non-profit organizations, schools, hospitals, nursing homes, homes for the disabled, orphanages, churches, etc. [CISDF] wishes 'Not to feed, but to help in the production of food! Not to clothe, but to help in the production of clothing!'"

12.

CISDF claims to be associated with several U.S. government agencies, and has obtained tax exempt status from the U.S. Internal Revenue Service.

13.

CISDF also claims to be in an affiliated partnership with Saint Nikolas, a charity organization located in Kiev, Ukraine.

14.

Prior to May of 2010, Nataliya was told by Valera, a representative of Saint Nikolas, about CISDF and Saint Nikolas's partnership and the organization's mission to assist economic development in the CIS.

/////

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/////

/////

1 15.

2 In or around early May of 2010, Nataliya contacted CISDF about making a
3 donation.

4 16.

5 Nataliya wanted her donation to go to the purchase and shipment of clothes to
6 Saint Nikolas, in Kiev, Ukraine.

7 17.

8 Nataliya wanted her brother, Sasha, to pick the clothes up from Saint Nikolas and
9 allocate them among several local charities and churches.

10 19.

11 Representatives of CISDF assured Nataliya that her donation would go to the
12 purchase and shipment of clothes to Saint Nikolas in Kiev, Ukraine, where her brother could
13 pick them up for reallocation to local charities. The representatives further offered to allow
14 Nataliya to pick out the clothes to be shipped from the CISDF warehouses in New Jersey.

15 20.

16 If not for the representations made by the representatives of CISDF and Saint
17 Nikolas, as a partner of CISDF, Nataliya would not have made a donation to CISDF.

18 21.

19 In early May, Nataliya traveled to New York and New Jersey to visit CISDF's
20 warehouses.

21 22.

22 At the CISDF warehouses, Nataliya picked out approximately \$46,500 of clothes
23 that she wanted shipped to Saint Nikolas and Sasha.

24 /////

25 /////

26 /////

1 23.

2 During her trips to New York and New Jersey, Nataliya incurred travel expenses
3 of approximately \$4,000. These trips were taken solely for Nataliya to pick out the clothes to be
4 shipped to Saint Nikolas and Sasha.

5 24.

6 On May 5, 2010, Nataliya made a wire transfer at her local Bank of America
7 branch in Vancouver, Washington to CISDF's account at PNC Bank for \$46,500.

8 25.

9 On or about May 7, 2010, CISDF was supposed to ship the clothes picked out by
10 Nataliya to Ukraine.

11 26.

12 On May 10, 2010, CISDF sent Nataliya a letter acknowledging her donation of
13 \$46,500.

14 27.

15 Over the next few months both Nataliya and Sasha tried to contact CISDF and
16 Saint Nikolas numerous times to find out the status of the shipment. They received no response.
17 Nataliya and Sasha never received a copy of the bill of lading showing shipment.

18 28.

19 Finally, Valera, the representative of Saint Nikolas, called Sasha to meet at a
20 warehouse and inspect the clothes.

21 29.

22 Sasha went to the warehouse to inspect the clothes and make arrangements to
23 move the clothes to another facility.

24 /////

25 /////

26 /////

1 30.

2 Valera, the representative of Saint Nikolas, presented Sasha with a sample of the
3 clothes allegedly received from CISDF. Sasha's inspection of the sample of the clothes showed
4 that they were of substantially lesser quality than the ones chosen by Nataliya.

5 31.

6 Sasha was not allowed to perform a quantity inspection of the clothes at the
7 warehouse. Valera did not allow Sasha to enter the main warehouse to visually inspect any
8 boxes or their contents.

9 32.

10 After his visit at the warehouse with the representative from Saint Nikolas, Sasha
11 arranged for a different facility to store the clothes. He has repeatedly contacted Valera and
12 Saint Nikolas to arrange for the clothes to be moved, but has received no response.

13 33.

14 Nataliya has repeatedly contacted CISDF to arrange for the clothes to be picked
15 up from Saint Nikolas by Sasha, but has also received no response.

16 34.

17 Nataliya asked a local law firm in Kiev, Ukraine, Sergii Koziakov and Partners, to
18 contact Saint Nikolas and inquire about the clothes. When the local attorney contacted Valera,
19 the representative of Saint Nikolas, Valera denied all knowledge of Nataliya and denied that
20 Saint Nikolas received a shipment of clothing from CISDF.

21 35.

22 CISDF knew or should have known that the clothes chosen by Nataliya would not
23 be shipped to Kiev, Ukraine, and/or that the clothes would not be delivered to Sasha.

24 36.

25 As a result of CISDF's fraud upon Nataliya, and Sasha, Nataliya has been
26 damaged in an amount to be proven at trial, but estimated to be the amount of her donation

1 \$46,500, plus her travel expenses of \$4,000.

2 WHEREFORE, plaintiff prays for judgment against defendant for:

3 (1) damages in an amount to be proven at trial, but currently estimated at \$50,500;

4 (2) pre-judgment interest; and

5 (3) any other relief deemed just, equitable, or appropriate by this court.

6
7 DATED this 8th day of August, 2011.

8
9 BLACK HELTERLINE LLP

10
11 By: 

12 Ronald T. Adams, WSBA No. 36013
13 Of Attorneys for Plaintiff
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COPY
Original Filed

AUG 08 2011

Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF WASHINGTON

FOR CLARK COUNTY

11-2-03115-6

NATALIYA MAKARENKO, an individual,

Plaintiff,

Case No.:

v.

CIS DEVELOPMENT FOUNDATION,
INC., a New Jersey non-profit corporation,

DECLARATION OF RONALD T.
ADAMS FOR OUT OF STATE
PERSONAL SERVICE

Defendant.

I, Ronald T. Adams, being sworn, depose and say:

1. I am one of the attorneys for Plaintiff Nataliya Makarenko in the above-
entitled matter, and make this declaration on personal knowledge gained in this capacity.

/////

/////

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/////

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Page 1 – DECLARATION OF RONALD T. ADAMS FOR OUT OF STATE
PERSONAL SERVICE

442023

Exhibit A
Page 12 of 13

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805 S.W. Broadway, Suite 1900
Portland, OR 97205
(503) 224-5560

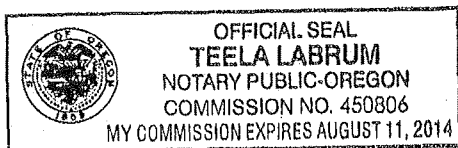
2. We cannot personally serve this document within Washington state.

Dated this 25 day of August, 2011.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING
IS TRUE AND CORRECT.

By: Ronald T. Adams
Ronald T. Adams, WSBA No. 36013
rta@bhlaw.com
(503) 224-5560
Of Attorneys for Plaintiff

This instrument was acknowledged before me on August 7, 2011 by Ronald T. Adams.



Teela Labrum
Notary Public - State of Oregon

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

NATALIYA MAKARENKO

Plaintiff,

Case No.: 11-2-03115-6

vs.

DECLARATION OF SERVICE

CIS DEVELOPMENT FOUNDATION, INC.

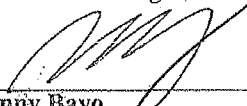
Defendant.


The undersigned, being first duly sworn on oath deposes and says: That he/she is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen years, not a party to or interested in the above entitled action and competent to be a witness therein.

That on 08/19/2011 at 3:50 PM, at the address of 8 Stallion Drive, Manalapan, within MONMOUTH County, NJ, the undersigned duly served 1 copy(ies) of the following document(s): **Summons and Complaint; Declaration of Ronald T. Adams for Out of State Personal Service** in the above entitled action upon **CIS DEVELOPMENT FOUNDATION, INC.**, by then and there personally delivering 1 true and correct copy(ies) of the above documents into the hands of and leaving same with **Alexander Bondarev, Registered Agent**.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date: _____

X 
Manny Bayo
Nationwide Process Service, Inc.
1201 S.W. 12th Avenue, Suite 300
Portland, OR 97205
503-241-0636


Rafael J De La Cruz
Notary Public
New Jersey
My Commission Expires 2-26-14

8/20/11



272786



CiS Development Foundation, Inc.

77 Milltown Rd., Suite 8c, East Brunswick, NJ 08816, USA

Tel. (732) 432-7037 * Fax (732) 432-7034 * E-mail: cisdf@cisdf.com * http://www.cisdf.com

9/29/2011

BLACK HELTERLINE LLP,
Ronald T. Adams, WSBA No. 36013
805 SW Broadway, Suite 1900
Portland, OR 97205-3359

RECD OCT 03 2011

Re: Case No: 11-2-03115-6

NATALIYA MAKARENKO, an individual, Plaintiff.

CIS DEVELOPMENT FOUNDATION, INC., a New Jersey non-profit corporation, Defendant.

Dear Sir,

Please accept our allegations for each point of your complaint.

PARTIES

1.

Nataliya Makarenko is an individual residing in Clark County, Washington. Nataliya is of Ukrainian descent and her brother, Sasha Makarenko, resides in or around Kiev, Ukraine.

CISDF:

CISDF cannot confirm or deny this information because never and under no circumstances had no contractual or other official mutual relations with Nataliya Makarenko. We don't know who Sasha Makarenko is. First time our organization has heard about this person from the present case.

2.

CIS Development Foundation, Inc. ("CISDF"), is a New Jersey non-profit corporation, with its principal place of business located in East Brunswick, New Jersey.

CISDF:

Correct.

3.

CIS stands for the Commonwealth of Independent States, which includes the Russian Federation, Ukraine, Republic of Belarus, Republic of Kazakhstan, Georgia, Latvia, Estonia, Republic of Uzbekistan, and other republics of the former Soviet Union.

CISDF:

Correct.

JURISDICTION AND VENUE

4.

Pursuant to RCW 2.08.010, the Superior Court for Washington has jurisdiction over this case.

CISDF:

No comments.

5.

Plaintiff is a resident of Clark County, Washington.

CISDF:

No comments.

6.

Defendant solicits and accepts donations from all over the United States, including Washington State.

CISDF:

Correct.

7.

Pursuant to RCW 4.12.025, this case is properly brought in Klickitat County.

CISDF:

No comments.

CAUSE OF ACTION – FRAUD

CISDF:

CISDF categorically rejects CAUSE OF ACTION – FRAUD.

Our organization operates in strict conformity with the legislation of the USA and the rules established for non-profit organizations.

Irreproachably fair name of our organization proves by the annual independent auditor reports (enclosed) as well as by long-term cooperation (since 1994) with the largest Charitable organizations of the USA such as Gifts in Kind International, World Vision, Matthew 25: Ministries, Feed the Children, Operation Compassion, International Aid, Gleaning for the World and many others.

During FY 2009-2010:

- 123 containers with humanitarian goods were shipped to needy people in the countries of the former Soviet Union and around the world.*
- Destination countries included Russia (12 containers), Kazakhstan (4 containers), Ukraine (23 containers), Georgia (46 containers), Belarus (3 containers), Czech republic (4 containers), Kirgizia (1 container), Moldova (7 containers), Lithuania (1 container), Israel (1 container), Estonia (4 containers), Armenia (10 containers), Latvia (5 containers) and USA (2 containers).*
- The total assistance to institutions amounted to \$54,203 million USD.*

- *Charitable assistance of CISDF reached more than 1 million people, mostly orphaned children, the elderly, the infirm, single mothers and mothers with many children, low-income citizens, and the unemployed.*

CISDF is included into number of the best charitable organizations of the USA which have received the top skills (4 stars) on the rating of "Charity Navigator".

8.

Plaintiff incorporates the allegations and assertions of fact within paragraphs 1 – 7 set forth above as if fully set forth herein.

CISDF:

No comments.

9.

According to its website, CISDF is dedicated to assisting in the revival of Russia's (and other Republics, of the Former Soviet Union) economy and cultural heritage for the mutual benefit of America and Russia by sending them non-monetary aid.

CISDF:

Correct.

10.

According to its website, CISDF "is an American non-profit organization that, for the mutual benefit of America and Russia, assists in (he revival of Russia's (and other Republics of the Former Soviet Union) economy and cultural heritage by sending non-monetary aid."

CISDF:

Correct.

11.

CISDF claims that one of its goals is "to assist in the economic development of the CIS, which is temporarily in dire straits, by donating humanitarian and technical aid (medical supplies and tools, pharmaceutical supplies and provisions, food, clothes and household items, office equipment, food processing machinery, etc.). All assistance is shipped to nonprofit organizations, schools, hospitals, nursing homes, homes for the disabled, orphanages, churches, etc. [CISDF] wishes "Not to feed, but to help in the production of food! Not to clothe, but to help in the production of clothing".

CISDF:

Correct.

12.

CISDF claims to be associated with several U.S. government agencies, and has obtained tax exempt status from the U.S. Internal Revenue Service.

CISDF:

Correct.

13.

CISDF also claims to be in an affiliated partnership with Saint Nikolas, a charity organization located in Kiev, Ukraine.

CISDF:

CISDF never claims to be in an affiliated partnership with a charity organization Saint Nikolas, located in Kiev (Ukraine). But CISDF works with Saint Nikolas as a charity organization located in Kiev (Ukraine) according to the Agreement of Cooperation, as well as with many other charitable organizations around the world.

14.

Prior to May of 2010, Nataliya was told by Valera, a representative of Saint Nikolas, about CISDF and Saint Nikolas's partnership and the organization's mission to assist economic development in the CIS.

CISDF:

No comments.

15.

In or around early May of 2010, Nataliya contacted CISDF about making a donation.

CISDF:

It's true.

16.

Nataliya wanted her donation to go to the purchase and shipment of clothes to Saint Nikolas, in Kiev, Ukraine.

CISDF:

CISDF never buys charitable goods and never have its sold. CISDF receives charitable goods as a donation and sends them to addresses of needy organizations as a donation as well. Monetary donation from our sponsors covers the expenses for storage, transportation and distribution charitable goods as well as the administrative fee.

17.

Nataliya wanted her brother, Sasha, to pick the clothes up from Saint Nikolas and allocate them among several local charities and churches.

CISDF:

CISDF sends charitable cargoes exclusively direct to address of the noncommercial organizations-recipients. No physical person can pick up and transfer the cargoes to other organizations, except the organization-recipients. Mutual relations between the organization-recipients (in this case — Saint Nikolas foundation) and other local charities, organizations, churches or physical persons are not a subject of the CISDF's competence.

19.

Representatives of CISDF assured Nataliya that her donation would go to the purchase and shipment of clothes to Saint Nikolas in Kiev, Ukraine, where her brother could pick them up for reallocation to local charities. The representatives further offered to allow Nataliya to pick out the clothes to be shipped from the CISDF warehouses in New Jersey.

CISDF:

CISDF has no (and had no) any representatives around world except official employees of CISDF. All business relationship between CISDF and organizations-recipients are adjusted by Contracts or Agreements. CISDF has business relationship with representatives of organizations-recipients only if they have official authority from organizations-recipients.

20.

If not for the representations made by the representatives of CISDF and Saint Nikolas, as a partner of CISDF, Nataliya would not have made a donation to CISDF.

CISDF:

CISDF cannot make comments on the personal statements outside of the field of the business relations supported by official documents.

21.

In early May, Nataliya traveled to New York and New Jersey to visit CISDF's warehouses.

CISDF:

No comments.

22.

At the CISDF warehouses, Nataliya picked out approximately \$46,500 of clothes that she wanted shipped to Saint Nikolas and Sasha.

CISDF:

No comments.

23.

During her trips to New York and New Jersey, Nataliya incurred travel expenses of approximately \$4,000. These trips were taken solely for Nataliya to pick out the clothes to be shipped to Saint Nikolas and Sasha.

CISDF:

No comments.

24.

On May 5, 2010, Nataliya made a wire transfer at her local Bank of America branch in Vancouver, Washington to CISDF's account at PNC Bank for \$46,500.

CISDF:

It's true.

On May 10, 2010, CISDF as a tax-exempt 501 (c)(3) organization sent a "Thank letter" to Ms. Nataliya Makarenko which confirmed that:

*In compliance with Internal Revenue Code requirements, this certifies that the **CISDF did not provide any goods or services of substantial value to you in consideration of your donation.** Therefore, within the limits prescribed by law, the full amount of your gift is deductible for Federal Income Tax Purposes. Please save this letter for your income tax records.*

25.

On or about May 7, 2010, CISPF was supposed to ship the clothes picked out by Nataliya to Ukraine.

CISDF:

Three 40' containers were sent to International Charitable Fund "Saint Nikolas" (one at May 11 and two at May 18, 2010) by CISDF. Bill of Ladings and Packing Lists are enclosed. The value of charitable cargoes amounted:

1 container \$530,639.89

2 container \$386,950.00

3 container \$394,557.58

Total value exceeded 1.3 million dollars.

26.

On May 10, 2010, CISDF sent Nataliya a letter acknowledging her donation of \$46,500.

CISDF:

It's true (as stated above).

27.

Over the next few months both Nataliya and Sasha tried to contact CISDF and Saint Nikolas numerous times to find out the status of the shipment. They received no response. Nataliya and Sasha never received a copy of the bill of lading showing shipment.

CISDF:

No comments.

Office CISDF works Monday through Friday (9am – 4 pm eastern time).

28.

Finally, Valera, the representative of Saint Nikolas, called Sasha to meet at a warehouse and inspect the clothes.

CISDF:

No comments.

29.

Sasha went to the warehouse to inspect the clothes and make arrangements to move the clothes to another facility.

CISDF:

No comments.

As stated above, a relationship between organizations-recipients and local organization is out of CISDF's competence.

30.

Valera, the representative of Saint Nikolas, presented Sasha with a sample of the clothes allegedly received from CISDF. Sasha's inspection of the sample of the clothes showed that they were of substantially lesser quality than the ones chosen by Nataliya.

CISDF:

CISDF doesn't know who Valera is and who Sasha is.

If it meant Mr. Valery Russkikh, he is not representative but he is President of International Charitable Fund "Saint Nikolas", who signed General Agreement of mutual relationship between CISDF and International Charitable Fund "Saint Nikolas".

CISDF doesn't know what Valera showed to Sasha. But CISDF was sent to address of International Charitable Fund "Saint Nikolas" the charitable cargo in exact conformity with earlier coordinated list that proves by documents (enclosed).

31.

Sasha was not allowed to perform a quantity inspection of the clothes at the warehouse. Valera did not allow Sasha to enter the main warehouse to visually inspect any boxes or their contents.

CISDF:

No comments.

A relationship between organizations-recipients and local charities is out of ability of CISDF.

32.

After his visit at the warehouse with the representative from Saint Nikolas, Sasha arranged for a different facility to store the clothes. He has repeatedly contacted Valera and Saint Nikolas to arrange for the clothes to be moved, but has received no response.

CISDF:

No comments.

A relationship between organizations-recipients and local organizations is out of CISDF's competence.

33.

Nataliya has repeatedly contacted CISDF to arrange for the clothes to be picked up from Saint Nikolas by Sasha, but has also received no response.

CISDF:

No comments.

A relationship between organizations-recipients and local organizations is out of CISDF's competence.

34.

Nataliya asked a local law firm in Kiev, Ukraine, Sergii Koziakov and Partners, to contact Saint Nikolas and inquire about the clothes. When the local attorney contacted Valera, the representative of Saint Nikolas, Valera denied all knowledge of Nataliya and denied that Saint Nikolas received a shipment of clothing from CISDF.

CISDF:

No comments.

A relationship between organizations-recipients and local attorneys is out of CISDF's competence.

35.

CISDF knew or should have known that the clothes chosen by Nataliya would not be shipped to Kiev, Ukraine, and/or that the clothes would not be delivered to Sasha.

CISDF:

It's deception.

All charitable cargos according Agreement between CISDF and International Charitable Fund "Saint Nikolas" was delivered.

Receipts of Acknowledging Donation are enclosed.

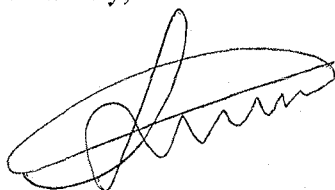
36.

As a result of CISDF's fraud upon Nataliya, and Sasha, Natalia has been damaged in an amount to be proven at trial, but estimated to be the amount of her donation \$46,500, plus travel expenses of \$4,000.

WHEREFORE,

1. *Statements of a plaintiff are false. These statements have no proof, unsubstantiated and are not confirmed by any documents.*
2. *CISDF has completely honored of its obligations according General Agreement and Amendments with Charitable Fund "Saint Nikolas".*
3. *CISDF rejects charge in fraud and puts forward the counterclaim to Ms. NATALIYA MAKARENKO in the amount of \$1.00 for the moral damage of the CISDF's fair name (plus pre-judgment interest; and any other relief deemed-just, equitable, or appropriate by this court, if Ms. NATALIYA MAKARENKO will not satisfied by this allegations).*

Sincerely,



Alexander Bondarev
Chairman of the Board

B L A C K

H E L T E R L I N E LLP

ATTORNEYS AND COUNSELORS AT LAW

RONALD T. ADAMS
DIRECT DIAL: (503) 417-2132
E-mail: rta@bhllaw.com
Admitted in Oregon and Washington

Our File No. 010861-0007

October 24, 2011

CIS Development Foundation, Inc.
c/o Alexander Bondarev, Registered Agent
8 Stallion Drive
Manalapan, NJ 07726

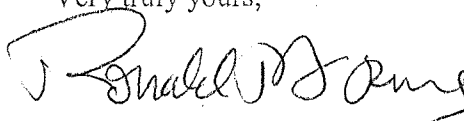
CIS Development Foundation, Inc.
c/o Alexander Bondarev, Chairman
77 Milltown Rd., Suite 8c
East Brunswick, NJ 08816

Reference: *Nataliya Makarenko v. CIS Development Foundation, Inc.*
Clark County Superior Court Case No. 11-2-03115-6
NOTICE OF MOTION FOR DEFAULT

Dear Mr. Bondarev:

The time for CIS Development Foundation, Inc. to file an answer or appear in the above-reference case has passed. Therefore, I intend to file a motion for default and supporting affidavit within five days from the date of this letter, plus time for service, if you still have not filed an answer by that time. A draft copy of the motion for default and supporting declarations is attached.

Very truly yours,



Ronald T. Adams

RTA:CMW/tl
465347

cc: Client

Exhibit E
Page 1 of 30



805 SOUTHWEST BROADWAY • SUITE 1900 • PORTLAND OREGON 97205-3359
TELEPHONE 503.224.5560 FACSIMILE 503.224.6148 WWW.BH

0-000000184

IN THE SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY

NATALIYA MAKARENKO, an individual,

Plaintiff,

v.

CIS DEVELOPMENT FOUNDATION,
INC., a New Jersey non-profit corporation,

Defendant.

Case No.: 11-2-03115-6

PLAINTIFF'S MOTION FOR ORDER
OF DEFAULT AND GENERAL
JUDGMENT OF DEFAULT AGAINST
DEFENDANT

RELIEF REQUESTED

Pursuant to CR 55, Plaintiff Nataliya Makarenko moves the Court for an order and general judgment of default against the defendant for failure to file an answer or otherwise appear in the above-referenced action within the time prescribed by law. This motion is supported by the provisions of CR 54 and 55, the Court's records and files in the above-referenced case, and the Declaration of Ronald T. Adams attached hereto as Exhibit 1 (the "Adams Decl.").

Page 1 – PLAINTIFF'S MOTION FOR ORDER OF DEFAULT AND
GENERAL JUDGMENT OF DEFAULT AGAINST DEFENDANT

Exhibit E
Page 2 of 30

465222

BLACK HELTERLINE LLP
805 S.W. Broadway, Suite 1900
Portland, OR 97204

(50) 0-000000185

FACTUAL BACKGROUND

On August 8, 2011, plaintiff Nataliya Makarenko of Clark County, Washington filed a Complaint for a money judgment against defendant CIS Development Foundation, Inc. ("CISDF"), a New Jersey non-profit corporation. Adams Decl. ¶ 2. The Registered Agent for CISDF was personally served with true copies of the summons and Complaint on August 19, 2011, pursuant to RCW 4.28.080 and CR 4. Adams Decl. ¶ 3.

CISDF has not filed an answer nor made any other appearance in this case, although the time provided for doing so has expired. Adams Decl. ¶¶ 4 and 5. On October 24, 2011, pursuant to CR 55(a)(3), I arranged for CISDF to be served a Notice of Intent to File a Motion for Order of Default along with a draft of Plaintiff's Motion for Order of Default and General Judgment of Default Against Defendant by mail. Adams Decl. ¶ 6. To date, CISDF still has not filed an answer or notice of appearance. Adams Decl. ¶ 6.

LEGAL AUTHORITIES

Statement of Basis for Venue as Required by CR 55(a)(4).

Pursuant to RCW 4.12.025, this case is properly brought in Klickitat County. Plaintiff is a resident of Clark County, Washington. See ¶ 2 to the Makarenko Declaration attached hereto as Exhibit 2 ("Makarenko Decl."). Defendant solicits and accepts donations from all over the United States, including Washington State. Makarenko Decl. ¶ 4. The defendant approached Ms. Makarenko and solicited her donation in Clark County, Washington, corresponding with Ms. Makarenko at her Clark County address, and calling her on her Clark County telephone number. Makarenko Decl. ¶¶ 3 and 5. The donation and understanding about how the donated funds were to be used was formed in Clark County, Washington. Makarenko Decl. ¶¶ 5 and 6. Finally, the defendant requested that Ms. Makarenko make her donation by wire transfer from her local Bank of American Branch in Clark County. Makarenko Decl. ¶ 9. Based on these facts, venue is proper in Clark County Superior Court.

Order and Judgment of Default

When a party fails to appear, plead, or otherwise defend against a judgment for affirmative relief within the time period provided by law, the plaintiff may apply to the court by motion and affidavit for an order of default and a general judgment, and the Court may grant the plaintiff's motion. CR 55.

ARGUMENT

Since no appearance has been filed by the defendant, Plaintiff is entitled to an order of default against it. Further, since the claim is for a sum certain, judgment by default may be entered. The attached Makarenko Declaration ¶¶ 3-14 describes Ms. Makarenko's damages from CISDF's fraud and lays out some of the facts to which Ms. Makarenko would have testified to at trial.

PROPOSED ORDER AND PROPOSED GENERAL JUDGMENT BY DEFAULT

A Proposed Order and Proposed General Judgment by Default against the defendant are submitted herewith.

DATED this 1st day of November, 2011.

BLACK HELTERLINE LLP

By: _____
 Ronald T. Adams, WSBA No. 36013
 rta@bhlaw.com
 Black Helterline LLP
 805 SW Broadway, Suite 1900
 Portland, Oregon 97205
 (503) 224-5560
 (503) 224-6148 (fax)
 Of Attorney for Plaintiff

IN THE SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY

NATALIYA MAKARENKO, an individual,

Plaintiff,

v.

CIS DEVELOPMENT FOUNDATION,
INC., a New Jersey non-profit corporation,

Defendant.

Case No.: 11-2-03115-6

DECLARATION OF RONALD T. ADAMS
IN SUPPORT OF PLAINTIFF'S MOTION
FOR ORDER OF DEFAULT AND
JUDGMENT ON DEFAULT AGAINST
DEFENDANT

I, Ronald T. Adams, being sworn, depose and say:

1. I am one of the attorneys for Plaintiff Nataliya Makarenko in the above-entitled matter, and make this declaration on personal knowledge gained in this capacity.

2. On August 8, 2011, plaintiff Nataliya Makarenko of Clark County, Washington filed a Complaint for a money judgment against defendant CIS Development Foundation, Inc. ("CISDF"), a New Jersey non-profit corporation.

3. The Registered Agent for CISDF was personally served with true copies of the Summons and Complaint on August 19, 2011, a true copy of the Summons and Complaint served upon the Registered Agent for CISDF is attached hereto as Exhibit A. A true copy of the

1 proof of service is attached hereto as Exhibit B.

2 4. CISDF has not filed an answer nor made any other appearance in this case,
3 although the time provided for doing so has expired.

4 5. On October 3, 2011, I received a letter from Alexander Bondarev, the
5 Chairman of the Board for CISDF. It generally denied my client's allegations in the complaint,
6 but did not state that CISDF intended to file an appearance or otherwise defend against this
7 action. I have received no other communications from CISDF.

8 6. On October 24, 2011, I arranged for service by mail of the attached Notice
9 of Intent to File a Motion for Order of Default along with a draft of Plaintiff's Motion for Order
10 of Default and General Judgment of Default against Defendant. CISDF still has not filed an
11 Answer or Notice of Appearance.

12 7. To the best of my knowledge and belief, CISDF is an entity and, therefore,
13 is not an infant or incompetent person under CR 55(b)(1).

14 Dated this 1st day of November, 2011.

15 **I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING**
16 **IS TRUE AND CORRECT.**

17 By: _____
18 Ronald T. Adams, WSBA No. 36013
19 rta@bhlaw.com
20 (503) 224-5560
Of Attorneys for Plaintiff

21 This instrument was acknowledged before me on October ___, 2011 by Ronald T.
22 Adams.

23 _____
24 Notary Public – State of Oregon
25
26

IN THE SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY

NATALIYA MAKARENKO, an individual,

Plaintiff,

v.

CIS DEVELOPMENT FOUNDATION,
INC., a New Jersey non-profit corporation,

Defendant.

Case No.: 11-2-03115-6

DECLARATION OF NATALIYA
MAKARENKO IN SUPPORT OF
PLAINTIFF'S MOTION FOR ORDER OF
DEFAULT AND JUDGMENT ON
DEFAULT AGAINST DEFENDANT

I, Nataliya Makarenko, being sworn, depose and say:

1. I am the plaintiff in the above-entitled matter, and make this declaration on personal knowledge.

2. I live in Clark County, Washington.

3. Prior to May of 2010, I was approached by Valery Russky, from Saint Nikolas, a charitable organization located in Kiev, Ukraine.

4. Valery Russky told me about CIS Development Foundation, Inc. ("CISDF"), its mission, and its partnership with Saint Nikolas. I was told that CISDF solicited donations all over the United States and the Commonwealth of Independent States (including the

1 Russia, Ukraine, Belarus, Kazakhstan, Georgia, Latvia, and other republics of the former Soviet
2 Union) ("CIS").

3 5. I spoke with both Valery Russky and representatives of CISDF about
4 donating to CISDF and how it would use my funds. Specifically they told me that I could donate
5 to CISDF through a wire transfer and that CISDF would use the donated funds to purchase
6 clothing, ship the clothes to Saint Nikolas, which is located in Kiev, and that Saint Nikolas
7 would then distribute the clothes to other charities in and around Kiev.

8 6. Based on the representations of Valery Russky and representatives of
9 CISDF regarding their mission, I decided to donate \$46,500 to CISDF in early May of 2010. I
10 wanted my donation to go to the purchase and shipment of clothes to Saint Nikolas because I
11 have family that lives near Kiev, Ukraine.

12 7. My brother, Sasha Makarenko, lives near Kiev. When I told him about
13 CISDF and Saint Nikolas, he offered to store and distribute the donated clothing to the smaller
14 nearby charities for Saint Nikolas. Valery Russky, on behalf of Saint Nikolas and CISDF,
15 accepted Sasha's offer of assistance.

16 8. I flew from Washington state to New Jersey to pick out the clothes to be
17 shipped from CISDF. While in New Jersey and New York I picked out approximately \$46,500
18 of clothes to be shipped to Saint Nikolas. The sole reason for my visit to New Jersey and New
19 York was to pick out clothes to be sent to Saint Nikolas. My travel expenses totaled \$4,000.

20 9. On May 5, 2010, I initiated a wire transfer from my local Bank of America
21 branch in Clark County, Washington to CISDF's account at PNC Bank for \$46,500. A copy of
22 the confirmation of the wire transfer is attached as Exhibit A.

23 10. CISDF confirmed that it received the funds by a letter dated May __,
24 2010, which acknowledged my donation of \$46,500. A copy of that letter is attached as
25 Exhibit B.

26 11. Over the next few months I contacted CISDF and Saint Nikolas numerous

1 times to find out the status of the shipment of clothes. I did not receive any further
 2 correspondence or communications from CISDF regarding my donation or how the funds were
 3 used by CISDF.

4 12. My brother told me that he also tried to contact Saint Nikolas, and that
 5 Valery Russky, the representative of Saint Nikolas, finally called Sasha to meet at a warehouse
 6 and inspect the clothes. Sasha told me that he went to the warehouse to inspect the clothes and
 7 make arrangements to move the clothes to another facility. Valery presented Sasha with a
 8 sample of the clothes allegedly received from CISDF. Sasha told me that the sample of the
 9 clothes he was shown were of substantially lesser quality than the ones I had chosen for the
 10 shipment. After his visit at the warehouse, Sasha arranged for a different facility to store the
 11 clothes.

12 13. Sasha and I have repeatedly contacted Valery Russky and Saint Nikolas to
 13 arrange for the clothes to be moved, but have received no response.

14 14. I have also repeatedly contacted CISDF to arrange for the clothes to be
 15 picked up from Saint Nikolas by Sasha, but have also received no response from CISDF.

16 Dated this 1st day of November, 2011.

17 **I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING**
 18 **IS TRUE AND CORRECT.**

19 By: _____
 20 Nataliya Makarenko
 21 Plaintiff

22 This instrument was acknowledged before me on _____, 2011 by
 23 Nataliya Makarenko.

24 _____
 25 Notary Public – State of Oregon
 26

IN THE SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY

NATALIYA MAKARENKO, an individual,

Plaintiff,

v.

CIS DEVELOPMENT FOUNDATION,
INC., a New Jersey non-profit corporation,

Defendant.

Case No.: 11-2-03115-6

ORDER RE: PLAINTIFF'S MOTION FOR
ORDER OF DEFAULT AND DEFAULT
JUDGMENT

JUDGMENT SUMMARY

Judgment Creditor: Nataliya Makarenko

Attorney for Judgment Creditor: Ronald T. Adams, WSBA No. 36013
Black Helterline LLP
805 S.W. Broadway, Suite 1900
Portland, OR 97205
Tel: (503) 224-5560

Judgment Debtor: CIS Development Foundation, Inc.
77 Milltown Rd., Suite 8c
East Brunswick, NJ 08816

Page 1 – PLAINTIFF'S MOTION FOR ORDER OF DEFAULT AND
GENERAL JUDGMENT OF DEFAULT AGAINST DEFENDANT

Exhibit E
Page 27 of 30

465222

BLACK HELTERLINE LLP
805 S.W. Broadway, Suite 1900
Portland, OR 97205

(503) 0-000000210

1 Attorney for Judgment Debtor: None
 2 Principal Judgment Amount: \$50,500
 3 Interest To Date of Judgment: \$0
 4 TOTAL: \$ 50,500.00
 5 Total Judgment: \$50,500.00
 6 Interest Rate on Judgment: 5.25% per annum from entry of judgment until
 7 paid in full.
 8

9 This matter having come on before the undersigned Judge of the above-entitled
 10 court for the entry of an Order of Default and Default Judgment against defendant CIS
 11 Development Foundation, Inc., a New Jersey not for profit corporation, and the court having
 12 reviewed the records and the files herein, including the Declaration of Ronald T. Adams, and
 13 otherwise being fully advised in the premises, it is now, therefore,

14 ORDERED, ADJUDGED AND DECREED that defendant CIS Development
 15 Foundation, Inc. is hereby ordered and adjudged to be in default in this action for want of a
 16 pleading herein; and it is further

17 ORDERED, ADJUDGED AND DECREED that plaintiff Nataliya Makarenko
 18 shall have judgment against defendant CIS Development Foundation, Inc.

19 Monies due and owing: \$50,500.00

20 Total Judgment: \$50,500.00

21 This sum shall bear interest at the statutory rate of 5.25% per annum from entry of
 22 judgment until paid in full.

23 DONE IN OPEN COURT this ____ day of _____, 2011.
 24
 25
 26

 JUDGE/COMMISSIONER

Page 2 – PLAINTIFF'S MOTION FOR ORDER OF DEFAULT AND
 GENERAL JUDGMENT OF DEFAULT AGAINST DEFENDANT

Exhibit E
 Page 28 of 30

465222

BLACK HELTERLINE LLP
 805 S.W. Broadway Suite 1900
 Portland, OR 97204

0-000000211

1
2
3 SUBMITTED BY:
4

5 Ronald T. Adams, WSBA No. 36013
6 rta@bhlaw.com
7 Black Helterline LLP
8 805 SW Broadway, Suite 1900
9 Portland, Oregon 97205
10 (503) 224-5560
11 (503) 224-6148 (fax)
12 Of Attorney for Plaintiff
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Page 3 -- PLAINTIFF'S MOTION FOR ORDER OF DEFAULT AND
GENERAL JUDGMENT OF DEFAULT AGAINST DEFENDANT

465222

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Exhibit E
Page 29 of 30

BLACK HELTERLINE LLP
805 S.W. Broadway, Suite 1900
Portland, Oregon 97205

(503) 0-000000212

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing ORDER RE:
3 PLAINTIFF'S MOTION FOR ORDER OF DEFAULT AND DEFAULT JUDGMENT upon:

4 CIS Development Foundation, Inc.
5 c/o Alexander Bondarev, Registered Agent
6 8 Stallion Drive
7 Manalapan, NJ 07726

8 and

9 CIS Development Foundation, Inc.
10 c/o Alexander Bondarev, Chairman
11 77 Milltown Rd., Suite 8c
12 East Brunswick, NJ 08816

13 ☒ by mailing a true copy thereof in a sealed, first-class postage prepaid envelope,
14 addressed to said attorneys' addresses as shown above and deposited in the United States Mail at
15 Portland, Oregon on the date set forth below.

16 ☐ by sending a true copy thereof via overnight courier in a sealed, prepaid
17 envelope, addressed to said attorneys' address as shown above on the date set forth below.

18 ☐ by faxing a true copy thereof to said attorneys' facsimile numbers as shown
19 above on the date set forth below.

20 DATED this 1st day of November, 2011.

21 BLACK HELTERLINE LLP

22 By:

23 Ronald T. Adams, WSBA No. 36013
24 rta@bhlaw.com
25 Black Helterline LLP
26 805 SW Broadway, Suite 1900
Portland, Oregon 97205
(503) 224-5560
(503) 224-6148 (fax)
Of Attorney for Plaintiff

3
FILED

2012 JAN -4 PM 3:29

SCOTT G. WEBER, CLERK
CLARK COUNTYIN THE SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY

NATALIYA MAKARENKO, an individual,

Plaintiff,

v.

CIS DEVELOPMENT FOUNDATION,
INC., a New Jersey non-profit corporation,

Defendant.

Case No. 11-2-03115-6

DECLARATION OF CAITLIN M. WONG
IN SUPPORT OF PLAINTIFF'S MOTION
FOR FEES AND COSTS AND
MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION FOR ORDER TO
SHOW CAUSE

I, Caitlin M. Wong, being sworn, depose and say:

1. I am an associate at Black Helterline LLP. Though I am not licensed to practice law in Washington, I have been involved in managing client communications and provided litigation support to Ronald Adams with regard to the above-entitled matter. I make this declaration on personal knowledge gained in this capacity.

2. Our office received a telephone call from Alex Ross, an attorney in New York, on November 3, 2011. Because Attorney Adams was engaged in full-day depositions on that day and the next day, his assistant forwarded the voice mail left by Attorney Ross to me. Because I knew that we had mailed the court the Motion for Default on November 2, 2011, I

.....

1 decided to return Attorney Ross' telephone call instead of making him wait for several days
2 before receiving a response.

3 3. During my telephone conversation with Attorney Ross, he represented that
4 he was working on finding CISDF counsel licensed in Washington to defend the case. He also
5 stated that he did not understand why CISDF had not filed its purported answer or contact an
6 attorney earlier, since "CISDF does enough business to know better."

7 4. While discussing the purported answer and how it had not been filed,
8 Attorney Ross objected to several factual assertions in the complaint and asked that the Motion
9 for Default not be filed. I explained that we had mailed it in the day before and I was not certain
10 that I could withdraw it, even if Nataliya consented. I further explained that it usually takes a
11 couple of days for the court to turn around default judgments when requested by mail, so
12 Attorney Ross could enter a notice of appearance or find local counsel to enter such a notice if he
13 and CISDF acted quickly.

14 5. Attorney Ross then began settlement negotiations, trying to get me to give
15 him an offer of settlement that he could take to CISDF. I will not say more on this matter in this
16 declaration because communications for settlement purposes are protected under the rules of
17 evidence.

18 6. After it became clear that I would not make an acceptable settlement offer,
19 Attorney Ross asked if I was licensed to practice in New York or New Jersey. When I stated that
20 I was not licensed in either state, he told me that both New York and New Jersey do not enforce
21 default judgments obtained in other states. Therefore, even if Nataliya received her default
22 judgment, she would not be able to collect it.

23 7. Attorney Ross again requested that we withdraw our Motion for Default
24 against CISDF. Due to CISDF's repeated failures to respond to contact from Nataliya, its failure
25 to file any pleadings in response to the complaint or the notice of default, and my conversation
26 with Attorney Ross, I was hesitant to recommend to Attorney Adams he withdraw the Motion for

1 Default when it had already been mailed to the court—assuming, of course, that withdrawal of
2 the motion without prejudice would be possible.

3 8. I communicated this hesitation to Attorney Ross by stating that I thought it
4 extremely unlikely that plaintiff would withdraw the Motion for Default and that Attorney Ross
5 should find local counsel for CISDF as quickly as possible, since he could still file a formal
6 notice of appearance or an answer before the court could act on the Motion for Default.

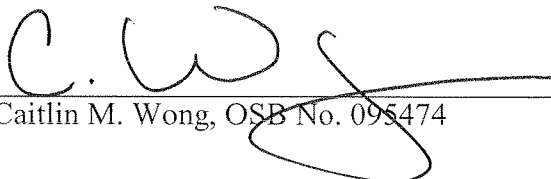
7 9. I also agreed to, and did, send Attorney Ross a complete and true copy of
8 the filed Motion for Default.

9 10. Our conversation and Attorney Ross' comment gave me the impression
10 that Attorney Ross was, in fact, representing CISDF.

11 11. Five days after my conversation with Attorney Ross, this court granted
12 plaintiff's motion for an order and judgment of default against CISDF.

13 Dated this 4th day of January, 2012.

14 **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF**
15 **THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.**

16
17 By: 
18 Caitlin M. Wong, OSB No. 095474
19
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25
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2012 MAR 22 AM 10: 33

SCOTT G. WEBER, CLERK
CLARK COUNTY

IN AND FOR THE COUNTY OF CLARK

Plaintiff,

V.

Defendant.

Case No.: 11-2-03115-6

COURT'S DECISION

The essential facts are uncontested. The plaintiff donated over \$46,000 to the defendant in May 2010. The plaintiff became dissatisfied with the defendant's actions relating to the expenditure of the donation and in April, 2011 hired attorneys in Kiev, Ukraine to address the matter. In August, 2011 the plaintiff filed suit in the present case. Alexander Bondarev, registered agent for the defendant, received personal service of the lawsuit approximately one week later. Mr. Bondarev posted a letter to the plaintiff's attorney that addressed the issues raised in the Complaint. The letter was never filed with the court.

365

1
2 Approximately one month later plaintiff's attorney sent a letter to Mr.
3 Bondarev indicating he would file a Motion for Default, along with a copy of
4 the motion and its proposed Judgment. Hearing no response, on 11/2/2011 the
5 plaintiff mailed the above-referenced pleadings to the clerk of the court for
6 entry.

7
8 The next day an attorney licensed to practice in New York contacted the
9 plaintiff's attorney to discuss the case. He gave the impression he was
10 representing the defendant; however, he did say he was looking for local
11 counsel since he was not licensed to practice law in Washington. The
12 plaintiff's counsel told him to act quickly. Five days later the default
13 motion was granted and judgment was entered. Fifteen days later an attorney
14 licensed to practice in Washington contacted the plaintiff's attorney. When
15 negotiations to vacate the default failed, the defendant timely filed the
16 motion presently before the Court.

17
18 CR60 governs vacations of judgments. Default judgments are not favored.
19 Griggs v Averbeck Realty, Inc., 92 Wn.2d 576, 599 P.2d 1289 (1979). Deciding
20 controversies on the merits is preferred; however, the need for a responsive
21 and responsible system demands that parties comply with legal process.
22 Norton v Brown, 99 Wn.App 118, 992 P.2d 1090 (1999). Equitable principals
23 guide a court in deciding whether or not to vacate a default judgment.
24 Norton v. Brown at 123.

25 In White v Holm, 73 Wn.2d 348, 438 P.2d 581 (1968) our
Supreme Court announced four factors which must be shown
by a moving party. These factors are whether (1) there is

1 substantial evidence to support the moving party's claim
2 of a prima facie defense; (2) the moving party's failure
3 to timely appear in the action was occasioned by mistake,
4 inadvertence, surprise, or excusable neglect; (3) the
5 moving party acted with due diligence after notice of
6 entry of the default judgment; and (4) vacating the
7 default judgment would result in a substantial hardship to
8 the nonmoving party. Where a party fails to provide
9 evidence of factors (1) and (2), no equitable basis exists
10 for vacating a judgment. A trial court abuses its
11 discretion when it vacates a judgment without evidence of
12 these two factors.

13
14 If the defaulting party demonstrates a strong or conclusive defense,
15 a Court should spend little time seeking the reasons for the failure
16 to appear and answer, provided the moving party timely filed its
17 motion, which it did in the present case. When the moving party's
18 evidence supports no more than a prima facie defense, the reason for
19 a nonappearance are more closely reviewed. Johnson v Cash Store,
20 116 Wn.App 833, 68 P.3d 1099 (2003).

21
22 In the present case there may be prima facie evidence of a defense;
23 however, it is not a conclusive defense. The party's failure to
24 timely appear was inexcusable neglect. The plaintiff bent over
25 backwards to accommodate the defendant. The plaintiff reportedly
told the defendant's registered agent he needed to file an Answer
with the court. He notified the defendant's registered agent of his
intent to take a default judgment. He basically told the
defendant's registered agent and out-of-state attorney how to cure
the defect.

26
27 When the defendant finally hired an attorney to represent the
28 corporation, he acted with due diligence and in a prompt manner.
29 Vacating judgment would result in a substantial hardship at this
30 point. The delay was caused by the defendant. In making this

1 statement, the Court wants to emphasize the defendant's attorney has
2 represented the corporation to its fullest; however, the inexcusable
3 delay by the defendant's registered agent prior to being retained
4 cannot overcome counsel's work. A responsible system demands that
5 parties comply with the legal process. The plaintiff encouraged the
6 defendant to conform to the rules. The plaintiff did all she could
7 to have the case heard on the merits and the defendant did not
8 comply. The plaintiff could do no more.

9 The Motion to Vacate Judgment is denied.

10
11 Dated this 21 day of March, 2012.

12
13 

14 _____
15 Rich Melnick
16 Judge of the Superior Court, Dept. 5

17 RAM:lmk
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BLACK HELTERLINE, LLP

August 03, 2012 - 3:48 PM

Transmittal Letter

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Case Name: Makarenko v. CIS Development Foundation, Inc.

Court of Appeals Case Number: 43284-6

Is this a Personal Restraint Petition? ☐ Yes ☒ No

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- ☐ Designation of Clerk's Papers ☒ Supplemental Designation of Clerk's Papers
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- ☐ Motion: _____
- ☐ Answer/Reply to Motion: _____
- ☒ Brief: Respondent's
- ☐ Statement of Additional Authorities
- ☐ Cost Bill
- ☐ Objection to Cost Bill
- ☐ Affidavit
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